

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after print publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 444-2055.

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.43.5104 pertaining to the)	AMENDMENT
adoption by reference of the)	
Declaration of Trust – State of)	NO PUBLIC HEARING
Montana Public Employees Pooled)	CONTEMPLATED
Trust)	

TO: All Concerned Persons

1. On October 29, 2010, the Montana Public Employees' Retirement Board (PER Board) proposes to amend the above-stated rule.

2. The PER Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the PER Board no later than 5:00 p.m. on September 23, 2010, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-2578; TDD (406) 444-1421; fax (406) 444-5428; or e-mail dhelman@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.43.5104 ADOPTION OF STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST (1) The board adopts and incorporates by reference the Declaration of Trust – State of Montana Public Employees Pooled Trust ~~that was approved by the board on September 10, 2009, and became effective on January 1, 2010~~ August 12, 2010.

(2) remains the same.

AUTH: 19-3-2104, 19-50-102, MCA

IMP: 19-3-2102, 19-50-102, MCA

REASON: The Internal Revenue Service requested that the Declaration of Trust – State of Montana Public Employees Pooled Trust (Pooled Trust) be amended to clarify that participation in the Pooled Trust is limited to employer and pension sharing trusts and eligible governmental plan trusts or custodial accounts under section 457(b) of the Internal Revenue Code. The State of Montana's 457(b) Deferred Compensation Plan and 401(a) Defined Contribution Plan (401(a) is the section in the Internal Revenue Code) meet these qualifications. Therefore, upon recommendation of tax counsel, Ice Miller, the PER Board amended the Pooled Trust to add Section 2.5 limiting participation in the Pooled Trust to qualified trusts.

Since, the Pooled Trust is adopted by reference, it is necessary to amend the rule to reference the most current Pooled Trust.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendments in writing to Roxanne M. Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-5459; fax (406) 444-5428; or e-mail rminnehan@mt.gov and must be received no later than 5:00 p.m., October 8, 2010.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Dena Helman at the above address no later than 5:00 p.m., October 8, 2010.

6. If the PER Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1043 persons based on approximately 2367 participants in the Defined Contribution Retirement Plan and 8070 participants in the Deferred Compensation Plan as of December 2009, for a total 10,437 participants.

7. The PER Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the PER Board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel and
Rule Reviewer

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel
and Rule Reviewer
Department of Administration

Certified to the Secretary of State August 30, 2010.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 4.17.103, 4.17.105, 4.17.106,) PROPOSED AMENDMENT
and 4.17.107 pertaining to the)
organic program)

TO: All Concerned Persons

1. On October 4, 2010, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on September 23, 2010, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, 302 N. Roberts, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail: agr@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

4.17.103 APPOINTMENT AND COMPENSATION OF ORGANIC
COMMODITY ADVISORY COUNCIL (1) through (3)(d) remain the same.

(4) Appointed members will serve ~~two~~ three-year staggered terms.
Appointed members shall not serve more than ~~two~~ three consecutive terms.

(5) through (7) remain the same.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: The pool of available qualified persons to serve as council members is very small. By increasing the term length, the department will save time replacing council members and be more efficient in the management of the program.

FISCAL IMPACT: There will be no fiscal impact on this rule.

4.17.105 APPLICATION PROCEDURES (1) through (4) remain the same.

(5) Applications must be submitted on forms approved by the department and must be completed, signed, and accompanied by the appropriate fees in order to be considered. Application forms can be found on the department's web site and will be accepted electronically. Forms are also available on request from the department. ~~Applications for continuation of certification are mailed to certified~~

~~producers no later than January 15 yearly and to certified handlers no less than 90 days prior to the anniversary date of submission of their initial application.~~

(6) through (9)(c) remain the same.

(d) Applications to continue handler certification are due ~~one year from the date of the previous application~~ no later than September 15 annually.

(10) through (11)(a) remain the same.

(b) upon receipt of a request to withdraw an application for certification, the department will suspend all ~~actions~~ services related to the application and bill the applicant for all fees due for services rendered up to the time of the department's receipt of the withdrawal request.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: By deleting the January 15 deadline for mailing applications, the department will be able to send information closer to the application deadline with more current information. Also, clients are able to download the application from the department's web site, reducing the amount of paperwork and postage required by the certification program.

Standardizing the application deadline for handlers to September 15 will equalize the department's workload into two definite time frames, which will allow staff to concentrate on the application process and improve efficiencies.

Replacing the word "action" with "services" clarifies that the department may still pursue enforcement actions, if necessary, after a client withdraws an application for certification.

FISCAL IMPACT: No direct significant fiscal impact. Department staff will be more efficient and have less postage costs.

4.17.106 APPLICATION FEES AND FEES FOR SERVICES (1) through (4) remain the same.

~~(5) The fee for extra certificates of organic operation shall be \$5 per form.~~

~~(6) A fee of \$25 shall be charged for checks returned due to nonsufficient funds.~~

~~(7) A fee of \$10 shall be charged for application packets. Application packets will include a copy of the NOP rules, MDA program rules, a fee schedule, an application form, and an OSP form. The fee may be applied to application fees.~~

(8 5) Failure to pay application, inspection, or other fees due within the required time will be cause for denying, suspending, or revoking certification.

(9) remains the same but is renumbered (6).

(7) Inspection fees are due no later than 30 days past billing. The department shall assess a collection fee of 18% annual percentage rate for any amount past due. The department may require past due payment of fees prior to providing certification services.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: The proposed rule amendments will allow the department to streamline procedures and be more efficient in its day-to-day business of certifying organic operations.

The returned checks fee is being deleted because the department rarely receives checks with nonsufficient funds.

The department proposes eliminating the application packet fee and the need for it to be incorporated into the application fee, thereby reducing the time required to track its individual payment.

The collection fee for past due inspection charges serves as an incentive for clientele to pay in a timely manner, thereby reducing the time to track unpaid bills and for issuing noncompliances per federal regulations, and thus, improving the efficiencies of program staff.

FISCAL IMPACT: Removing the fee for additional Certificates of Organic Operation will have no fiscal impact. These documents are now created and filed electronically by the department and can be distributed to certified operations at little or no cost to the state. Also, Certified Operations have generally not requested additional copies of their certificates.

Removal of the fee for nonsufficient funds will have no fiscal impact. The program has not received any checks with nonsufficient funds, and has not charged the fee, for the past eight years.

Removal of the application packet fee will have no significant fiscal impact. By allowing applications to be downloaded from the program web site, the department will save time and expense. Applications will be sent out only upon request and the cost of the packets will be incorporated into the application fee.

Adding a collection fee for late payment of inspection fees will impact an estimated 25 operations, at an additional cost of \$12 each, and generate \$300 in additional revenue to the organic program. Although difficult to estimate, the timely payment of inspection fees will indirectly save the department a significant amount of time.

4.17.107 ANNUAL REPORT AND ASSESSMENT FEES (1) Producers and handlers certified by the department, and new applicants for certification, must submit an annual report of their total gross sales and handling charges for all certified organic production and handling. Certified producers and new applicants for producer certification shall pay an annual assessment fee to the department as a percentage of gross sales of organically produced products. Certified handlers and new applicants for handler certification shall pay a flat annual assessment fee based on their reported level of gross sales and handling charges for all products and services included in their Organic Handling System Plans (OHSP):

(a) remains the same.

(b) the report and fees for both producers and handlers are due ~~along with each operation's annual application to continue certification;~~ and on March 15 annually.

~~(c) if a producer or handler chooses not to continue certification, their sales report and assessment fees are due on the anniversary date of their previous application.~~

(2) remains the same.

~~(3) The assessment fee on gross sales for production certified by the department and one or more additional certifiers is as follows:~~

~~(a) for sales of products represented as certified by the department, the assessment fee is 1% of gross sales; and~~

~~(b) for sales of products certified by the department, but represented as certified by a certifier other than the department, the assessment fee is .5% of gross sales.~~

~~(4) The assessment fee for handlers certified by the department and one or more additional certifiers is the same as the assessment fee for handlers certified only by the department.~~

(5 3) All assessment fees are nonrefundable upon receipt. The department shall assess a collection fee of 18% annual percentage rate for any amount past due. The department may require past due payment of fees prior to providing certification services.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON: The proposed rule amendments outlined above will allow the department to streamline procedures and be more efficient in its day-to-day business of certifying organic operations.

The department is clarifying and standardizing when and from whom annual reports and fees are due to resolve issues with late reports and payments. The language is also meant to clarify that assessments are due for the first year of certification by the department and that assessments are based on organic sales made the previous year, regardless of the certifier. The language also changes the deadline for gross sales reports and assessments for handlers from their anniversary date to March 15 (the same as for producers) to lessen confusion and to receive funding early in the year for operating the program.

The assessment fee rule for producers and handlers who are certified by more than one certifier is no longer needed. This provision was put in place at the beginning of the program when some operations were certifying with the department on a trial basis. The department did not want to penalize operations who were double certified. Currently, no operations double certify and the rule is outdated.

The collection fee for past due inspection charges serves as an incentive for clientele to pay in a timely manner, thereby reducing the time to track unpaid bills and for issuing noncompliances per federal regulations, and thus, improving the efficiencies of program staff.

FISCAL IMPACT: Removing the assessment fee for operations certified by the department and another certifying agent will have no fiscal impact.

Adding a collection fee for late payment of assessment fees will impact an estimated 25 operations, at an additional cost of \$12 each, and generate \$300 in additional revenue to the organic program. Although difficult to estimate, the timely payment of assessment fees will indirectly save the department a significant amount of labor.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, Montana, 59620-0201; telephone (406) 444-3144; fax (406) 444-5409; or e-mail agr@mt.gov and must be received no later than 5:00 p.m. on October 7, 2010.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

6. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this Notice of Proposed Amendment is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The effective date will be no sooner than December 31, 2010.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by regular mail, e-mail, and phone on August 30, 2010. For previous rule projects involving the same bill, the primary sponsor was given appropriate notice.

DEPARTMENT OF AGRICULTURE

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director, Department of Agriculture

Certified to the Secretary of State August 30, 2010.

BEFORE THE FISH, WILDLIFE AND PARKS COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) AMENDED NOTICE AND EXTENSION
ARM 12.6.2201, 12.6.2203, 12.6.2208,) OF COMMENT PERIOD ON
12.6.2210, and 12.6.2215 and the) PROPOSED AMENDMENT AND
adoption of NEW RULE I regarding) ADOPTION
exotic species)

TO: All Concerned Persons

1. On July 29, 2010 the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-364 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 1643 of the 2010 Montana Administrative Register, Issue Number 14.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the commission no later than 5:00 p.m. on September 17, 2010, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov.

3. After concerns expressed during the initial public comment period, the commission is proposing language stating no live fish may be transferred into or out of a facility raising coho salmon. The commission believes this is a significant change to the original proposal notice and is extending the public comment period.

4. The commission is not changing the original proposed amendments to ARM 12.6.2201, 12.6.2203, 12.6.2208, 12.6.2210, and 12.6.2215.

5. The commission is proposing the following amendment to NEW RULE I new matter underlined, deleted matter interlined:

NEW RULE I SPECIFIC REQUIREMENTS FOR CARE AND HOUSING OF EXOTIC WILDLIFE (1) remains as proposed.
(2) through (2)(a) remain as proposed.
(b) ~~No l~~ive fish may not leave be transferred into or out of the facility.
(c) through (3) remain as proposed.

AUTH: 87-5-702, 87-5-704, 87-5-705, 87-5-712, MCA
IMP: 87-5-705, 87-5-707, 87-5-709, 87-5-711, 87-5-712, MCA

6. Concerned persons may submit their data, views, or arguments in writing to FWP Exotics, Fisheries, P.O. Box 200701, Helena, MT 59620-0701, or e-mail

them to fwpexotics@mt.gov. Any comments must be received no later than September 24, 2010.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Joe Maurier

Joe Maurier

Secretary

Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter

Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State August 30, 2010

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.159.301 definitions,)
24.159.401 fees, 24.159.601 through)
24.159.680 nursing education)
programs, 24.159.1021 LPN practice)
permit, 24.159.1028 LPN licensure,)
24.159.1029 LPN foreign)
requirements, 24.159.1221 RN)
practice permit, 24.159.1228 RN)
licensure, 24.159.1229 RN foreign)
requirements, 24.159.1605)
delegation practices, 24.159.2020)
and 24.159.2021 nondisciplinary)
track, 24.159.2301 conduct of nurses,)
and the adoption of NEW RULES I)
and II program standards, NEW)
RULES III through VI continuing)
education, and NEW RULE VII)
clinical practice settings)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On September 30, 2010, at 10:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (board) no later than 5:00 p.m., on September 24, 2010, to advise us of the nature of the accommodation that you need. Please contact Cari Harris, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2340; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail nurse@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: As part of the periodic review of its administrative rules, the board is proposing revisions throughout the rules. Some of the proposed amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete

unnecessary or redundant sections, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use.

Accordingly, the board has determined that reasonable necessity exists to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule. Authority and implementation cites are being amended throughout to accurately reflect all statutes implemented through the rules and to provide the complete sources of the board's rulemaking authority.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.159.301 DEFINITIONS ~~As used in Title 37, chapter 8, MCA, and this chapter, unless defined specifically in a particular subchapter, the following definitions apply:~~

(1) through (3) remain the same.

(4) "Certifying body" means a national certifying organization that has been approved by the board to use psychometrically sound and legally defensible examinations for certification of APRN nursing specialties.

(5) and (6) remain the same.

~~(7)~~ (21) "~~Comprehensive nursing~~ Nursing assessment" means a systematic collection of data ~~conducted by an RN~~ to determine the patient's health status and to identify any actual or potential health problems.

~~(8)~~ (7) "Contact ~~hour~~ hours" means the time period of instruction determined by the continuing education provider and indicated on the participant's certificate of completion. Contact hours may be calculated in half-hour increments. One academic semester credit equals 15 contact hours; one academic quarter credit equals 12.5 contact hours.

~~(9)~~ (8) "Continuing education" means a planned learning activity that occurs in a classroom, online, audio-conference, video-conference, or as independent study. All continuing education must be approved by an accrediting organization or provided by an accredited academic institution of higher learning, a continuing education provider, or a an APRN certifying body, ~~or a continuing education accrediting organization.~~

(9) "Continuing education provider" means an entity approved by an accrediting organization to provide continuing education programs.

(10) through (16) remain the same.

~~(17)~~ (19) "National professional organization" means a board-recognized professional nursing membership organization that delineates ~~scope of~~ nursing practice standards and guidelines ~~for an APRN specialty.~~

(17) "Independent study" means a self-paced learning activity directed by a continuing education provider that includes both a mechanism for evaluation and feedback to the learner.

(18) through (28) remain the same but are renumbered (22) through (32).

(18) "National accreditation" means the ongoing review, evaluation, and approval of nursing education programs by the National League for Nursing Accrediting Commission (NLNAC) or the Commission on Collegiate Nursing

Education (CCNE). Nursing education programs without national accreditation are nonaccredited programs.

(20) "New nursing education program" means the initiation or addition of a new terminal degree or certificate in nursing education that prepares graduates for initial licensure.

(29) (33) "Standard" means an authoritative statement by which the board can judge the quality of nursing education or practice. A standard is established by authority, custom, or general consent as a model or example; something set up for the measure of quantity, weight, extent, value, or quality. A standard is substantially well established by usage in speech and writing and widely recognized as acceptable.

(30) through (33) remain the same but are renumbered (34) through (37).

(38) "Verification" of licensure, education, or prior disciplinary action against a license must be submitted to the board in writing, from a primary source.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-102, 37-8-202, 37-8-422, MCA

REASON: The board determined it is reasonably necessary to amend and add certain definitions in this rule to clarify terms used in current rules and statutes. Additionally, some definitions are being added or amended to align with rule amendments on continuing education or nursing education programs proposed elsewhere in this notice.

The board is amending the definition of "national professional organization" at renumbered (19) after determining that the term used in the rules should not be restricted to those approved organizations that delineate standards and guidelines for APRN specialties only. Additionally, the board is replacing "scope of practice" with the more accurate term "nursing practice standards and guidelines" as used and accepted in the nursing industry.

The board is amending renumbered (21) to clarify that LPNs perform nursing assessments but not comprehensive assessments. While not considered comprehensive assessments, these are part of the overall patient assessment. The board is adding (38) to specify that "verification" means a hard copy form of documentation that is submitted directly from a primary source, rather than from an applicant. The board determined that this definition will help ensure the authenticity, accuracy, and consistency of the verifying documentation.

24.159.401 FEES (1) remains the same.

(2) The fee for repeating the examination (NCLEX) for RN or LPN is ~~\$400~~ 50.

(3) remains the same.

(4) The application fee for each APRN specialty area recognition (APRN) certification is \$75, and a fee of \$50 for ~~each renewal period of each specialty certification~~ thereafter.

(5) through (10) remain the same.

(11) The fee for a printed copy of the laws and rules book is ~~\$20~~ 15. The fee for a copy of the laws and rules in CD-Rom format is \$5, with no restrictions on

downloading laws and rules from the board web site or making duplicate copies from the original copy ordered.

(12) through (16) remain the same.

(17) remains the same but is renumbered (20).

(17) The fee for a new nursing education program application and initial site survey is \$5000.

(18) The fee for board review of a special report from a nursing education program, as defined by ARM 24.159.635, is \$200.

(19) The fee for a site survey of a board-approved nursing education program, due to program noncompliance with educational standards, is \$3000.

AUTH: 37-1-134, 37-1-319, 37-8-202, MCA

IMP: 37-1-134, 37-1-141, 37-8-202, MCA

REASON: The board is amending this rule to comply with the requirements of 37-1-134, MCA, and adjust certain board fees to be commensurate with current costs. The reduced retesting fee is sufficient to cover costs of processing all retesting requests. The proposed new five dollar fee for a CD-Rom copy of rules and statutes covers the handling and mailing costs.

The board concluded that the financial burden for nursing education program surveys should not be entirely placed on individual licensees through licensing fees. Instead, the board is adding (17) through (19) to this rule to recover approximately one-half the costs of the nursing education program reviews from the programs receiving the service. This fee change will affect approximately 120 licensees/applicants and generate \$13,860 in additional annual revenue.

24.159.601 STATEMENT OF PURPOSE FOR NURSING EDUCATION PROGRAM STANDARDS RULES (1) ~~These requirements~~ rules provide a basis for the board to evaluate and approve nursing education programs and a format for nursing faculty and administrators to plan, implement, and evaluate nursing education for the following professional and practical nursing programs:

(a) and (b) remain the same.

(c) ~~associate degree education or certification for practical nursing~~ PN preparation.

(2) ~~The following rules set forth general requirements regarding all nursing education and specific requirements regarding:~~ curricula for faculty qualifications and responsibilities, and administrative roles and functions.

~~(a) curricula for:~~

~~(i) professional baccalaureate degree education for RN preparation;~~

~~(ii) professional associate degree education for RN preparation; and~~

~~(iii) associate degree education or certification for practical nursing preparation;~~

~~(b) faculty qualifications and responsibilities; and~~

~~(c) administrative roles and functions.~~

(3) These rules represent minimum requirements. The board shall interpret these rules to ensure that minimum requirements are met ~~and to allow flexibility to determine the scope, limits and direction of the nursing education program.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

REASON: The board is proposing amendments throughout the nursing education program rules following the recommendations of the board's education committee. Following development and adoption of a statewide curriculum model for nursing programs offering practical nursing degrees and Associate of Science degrees for registered nurses, programs seeking initial and ongoing approval have frequently sought the board's input and clarification regarding revised requirements. The board's education committee began an intense review of the education program rules in January 2009 which included lengthy work sessions involving education program directors and culminated in these proposed amendments to subchapter six of the board's administrative rules.

The board determined it is reasonably necessary to amend these rules to address the significant number of requests by the programs for clarification on current nursing education program requirements that were historically viewed as unnecessary and burdensome. The board notes that the proposed amendments also update rule language to utilize accepted current terminology as used in the standards of national accreditation for nursing programs and to mirror changes in language of the modern health care system.

Further, the board is proposing amendments throughout subchapter six to delineate specific minimum standards the board will use when evaluating nursing programs in the areas of curricula and faculty responsibilities. The board concluded that it is difficult and cumbersome for programs to interpret and demonstrate competence using the generalized standards contained in the current education program rules. The rule changes will also provide the board with the oversight and flexibility needed to operate effectively in program review and approval within the new structure created through these comprehensive amendments. The board is amending the nursing program rules to implement a systematic evaluation plan as an important point of clarification for the programs. As well, nursing education programs in Montana and across the country are currently facing difficulties in recruiting qualified faculty. The board believes the proposed amendments set adequate minimum quality standards for faculty, but also address the recruitment difficulties with changes in the use of faculty extenders or clinical resource RNs. The board believes these amendments will maintain a minimum set of standards that nursing programs can adhere to while ensuring adequate public protection by requiring nursing education program oversight by qualified faculty.

Accordingly, the board has determined that reasonable necessity exists to generally amend the nursing education program rules in subchapter six at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule. Authority and implementation cites are being amended throughout the subchapter to accurately reflect all statutes implemented through the rule and to provide the complete sources of the board's rulemaking authority.

24.159.604 PHILOSOPHY GUIDING PRINCIPLES, EDUCATIONAL OBJECTIVES, AND EXPECTED OUTCOMES OF NURSING EDUCATION PROGRAMS

(1) The faculty of the nursing education program shall develop and approve statements of philosophy guiding principles, educational objectives, and expected outcomes that are consistent with those of the parent institution and with the statutes and rules governing the practice of nursing.

~~(2) The philosophy must include statements about nursing practice and nursing education.~~

~~(3)~~ (2) The above information guiding principles and expected outcomes must be included in the program catalog or otherwise made available to students.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

REASON: The board is amending this rule and its catchphrase to require education programs to develop guiding principles, rather than statements of philosophy. The board concluded that statements of philosophy present a more vague standard and may cause unnecessary confusion as to program requirements.

24.159.605 ORGANIZATION AND ADMINISTRATION OF NURSING EDUCATION PROGRAMS (1) Parent institutions conducting a nursing program must be accredited by the appropriate regional accrediting bodies, which are listed in ARM 24.159.615.

(2) All clinical facilities (agencies) ~~agencies~~ with which the program maintains cooperative agreements for use as clinical laboratories must have licensure, approval, or accreditation appropriate to each agency.

(a) and (a)(i) remain the same.

(ii) a reasonable time frame for contract termination to ensure completion of the current semester or quarter of student clinical experiences;

(iii) agency's roles and responsibilities for student oversight and communication with faculty;

(ii) remains the same but is renumbered (iv).

~~(iii)~~ (v) expectations regarding the health status of students and faculty ~~in a variety of settings.~~

(3) and (4) remain the same.

(5) ~~Faculty~~ The board encourages nursing faculty and administration should to participate in governance of the parent institution and policy development, including but not limited to, matters related to appeals and grievances. Policies governing faculty employment, promotion, and tenure must be in writing and consistent with those of the parent institution.

(6) through (6)(b) remain the same.

(c) information regarding the process of obtaining a license; and

(d) access to the institution/program catalog; ~~and~~

~~(e) opportunity for students to participate in program policy development.~~

(7) Programs must maintain current records of student achievement within the program and provide students with ~~timely~~ evaluations based on educational objectives expected outcomes.

(8) Faculty members or other qualified persons shall be responsible for providing ~~timely~~ academic advice to students.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.606 EDUCATIONAL FACILITIES FOR NURSING EDUCATION PROGRAMS (1) remains the same.

(2) Physical facilities must be ~~designed~~ appropriate to meet the educational and clinical needs of the program. Classrooms, laboratories, offices, and conference rooms must be of adequate size, number, and type according to the number of students and purposes for which these areas are to be used.

(3) through (3)(b) remain the same.

(4) Clinical ~~resources~~ experiences must be:

(a) delineated in and applicable to the educational objectives expected outcomes of the program; and

(b) and (5) remain the same.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.609 PROGRAM EVALUATION (1) All nursing programs must have a ~~formal~~ written, systematic plan for evaluation plan developed by the faculty that is conducted on a regular basis and must include opportunity for student participation and ongoing assessment of student learning, published program outcomes, and compliance with board rules for nursing education programs. The plan must effectively support the planning process for the program and specify responsibilities, time frames, and procedures for evaluating each aspect of the program.

~~(2) Evaluations must address the following areas:~~

~~(a) the philosophy, educational objectives, and expected outcomes;~~

~~(b) the curriculum;~~

~~(c) policies governing recruitment, selection, progression, graduation, and other matters affecting education and health of students;~~

~~(d) factors contributing to faculty development, evaluation and effectiveness;~~

~~(e) the adequacy of clinical facilities for student experiences in a variety of inpatient and community-based settings;~~

~~(f) the adequacy of educational facilities including classrooms, technology, skills laboratories, and library and information resources; and~~

~~(g) health policy requirements.~~

(2) The plan must include:

(a) measurable outcomes of student learning;

(b) measurable aggregate program outcomes;

(c) processes to obtain evaluation data;

(d) time frame for data collection and analysis;

(e) evidence of a system of continuous quality improvement;

(f) opportunities for participation in the evaluation process by students, faculty, clinical staff, and employers of graduates; and

(g) a process for measuring student attrition and analysis of the reasons.

(3) At a minimum, the plan must include outcome expectations and data related to:

(a) NCLEX pass rate, including five-year trend data;

(b) student and alumni satisfaction with the program;

(c) employer satisfaction with graduates of the program;

(d) graduation rates; and

(e) adequacy of the physical and fiscal resources of the program.

(3) remains the same but is renumbered (4).

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.612 PROGRAM ANNUAL REPORT (1) An annual report for the current academic year must be submitted by ~~June 4~~ September 1 of each year, except in the year in which the program submits a self-study report. ~~Four copies must~~ The format and number of copies to be submitted to the board office will be determined by the board.

(2) The purpose of the annual report ~~must is to~~ provide current data for ~~interim~~ ongoing program evaluation by the full board. The report must include:

~~(a) progress during the past year toward achievement of the program's stated goals and the program's goals for the forthcoming year;~~

~~(b) progress toward board recommendations, if applicable;~~

~~(c) any changes during the last year in the following areas:~~

~~(i) qualifications or major responsibilities of the program director and/or faculty;~~

~~(ii) policies or practices used for selection, progression, and graduation of students;~~

~~(iii) practices followed in safeguarding the health and well-being of the students; and~~

~~(iv) curriculum plan, course descriptions, resources, and facilities;~~

~~(d) a summary of clinical agency contractual arrangements on a board furnished form; and~~

~~(e) a list of current faculty and identification of those faculty members on education waiver, to include:~~

~~(i) the date the board approved the waiver for each faculty member on waiver;~~

~~(ii) the date the faculty member completed the waiver requirements; and~~

~~(iii) the current number and percentage of faculty on waiver to the total full-time equivalents in the nursing program;~~

~~(f) a report of faculty members' pertinent professional development for the past year. This does not include standard agency requirements such as basic life support, blood-borne pathogens, etc.;~~

~~(g) current enrollment by course, including student to teacher ratios for clinical experiences;~~

~~(h) enrollment in the nursing program each year for the past five years;~~

~~(i) number of graduations from the nursing program each year for the past five years;~~

~~(j) a statement from the program director indicating that the nursing program's budget is sufficient to meet program needs;~~

~~(k) four current copies of the school catalog and student handbook; and~~

~~(l) current program evaluation plan with measurable goals and data to support the evaluation of attaining those goals.~~

(a) enrollment and graduation data for the report year (academic year), including:

(i) number of full- and part-time students;

(ii) student demographic data including in-state and out-of-state residency, race/ethnicity, and gender; and

(iii) number of practical nurses entering the registered nursing education program.

(b) NCLEX pass rates for first time testers;

(c) number of student positions available in the nursing education program, number of students accepted to program, and number of unfilled student positions;

(d) number of full-time and part-time faculty, including number of CRRNs;

(e) number of faculty on board waiver and dates of each waiver period;

(f) summary of substantive changes reported to the board during the past year, pursuant to ARM 24.159.635; and

(g) description of progress made by program on improvements recommended by the board or program's accrediting body.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

24.159.615 RECOGNIZED ACCREDITATION BODIES (1) remains the same.

(2) The board recognizes the following regional accreditation ~~body~~ bodies for purposes of approving nursing education programs:

~~(a) (d) Northwest Association of Schools Commission on and Colleges and Universities;~~

(a) New England Association of Schools and Colleges (NEASC);

(b) Middle States Association of Colleges and Schools (MSCHE);

(c) North Central Association of Colleges and Schools (NCACS);

(e) Southern Association of Colleges and Schools (SACS); and

(f) Western Association of Schools and Colleges (WASC).

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: The board is amending this rule to specify several additional regional accreditation bodies now recognized by the board.

24.159.625 FEASIBILITY STUDY FOR INITIAL APPROVAL OF ESTABLISHMENT OF A NEW NURSING EDUCATION PROGRAM (1) An

~~educational institution wishing to establish a program in nursing and to secure initial approval shall submit to the board a feasibility study by either December 1 or September 1 for review at the board's January or October, respectively, board meetings. For programs under the jurisdiction of the Montana Board of Regents, a common document shall be submitted. The first phase of establishing a new nursing education program is Phase I, notice of intent. The applicant shall notify the board of the intent to establish a new or expanded nursing education program by providing the following information:~~

~~(2) The feasibility study must include at least the following information:~~

~~(a) population data within the past three years and workforce supply and demand data from the past year documenting the need for the program as it relates to plans for total state resources and nursing education needs within the state results of an assessment of the need for the proposed nursing education program, including identification of potential employment opportunities for program graduates;~~

~~(b) purpose and classification type of educational program and proposed timetable for initiating the program;~~

~~(c) availability of qualified faculty total proposed student enrollment;~~

~~(d) budgeted list of proposed faculty positions and faculty qualifications;~~

~~(e) availability of adequate description of proposed clinical and academic facilities for the program opportunities that will meet expected outcomes for student training needs in each course with a clinical component;~~

~~(f) evidence identification of financial, physical, personnel, and other resources adequate necessary for the planning, implementation, and continuation of the program;~~

~~(g) anticipated proposed procedure for marketing program to potential students and eligibility requirements for student population admission to the program;~~

~~(h) tentative time table for planning and initiating proposed transition plan for students who may transfer to the program; and~~

~~(i) consideration description of how the proposed program may affect existing nursing programs in the state that share the proposed clinical sites, and indication that plans and the feasibility study needs assessment regarding the proposed program have been shared with the directors of existing affected programs in the state-;~~

~~(j) letter of commitment from the governing institution that outlines financial, physical, personnel, and other resources that will be devoted to the proposed nursing education program; and~~

~~(k) letters of support for proposed program from communities of interest.~~

~~(2) Board approval of a Phase I application permits the applicant to continue planning, but does not assure subsequent approval of Phase II.~~

~~(3) When the data submitted in the feasibility study are reviewed, the board may request additional information and may conduct a site visit to evaluate the information submitted. The next step is Phase II, application for admission of students. The applicant shall provide the following information to the board:~~

~~(4) Approval of the feasibility study by the board permits the institution to continue planning but does not assure subsequent approval.~~

~~(5) The following conditions must be met prior to application for initial program approval:~~

~~(a) name of a qualified nurse administrator who has been appointed to administer the nursing education program; and there are plans for sufficient qualified faculty to initiate the program; and~~

~~(b) a tentative written proposed program plan developed in accordance with the current Standards for Montana Schools of Professional or Practical Nursing has been submitted. list of sufficient qualified faculty, CRRNs, and administrative staff to initiate the program;~~

~~(c) (5) For programs under the jurisdiction of the Montana Board of Regents, the board will make a recommendation to notify the Montana Board of Regents concerning the quality of the proposed program's curriculum, faculty, and clinical experiences of pending board approval of the proposed program and, will make its final decision on approval only after receiving notification of the program's approval from the Board of Regents. will finalize Phase II approval. The program may then admit students who shall be eligible upon completion of the program to take the licensing examination.~~

~~(c) name of qualified consultant(s), if applicable, who has worked with nurse administrators and faculty to develop program and curriculum;~~

~~(d) overview of total curriculum, including:~~

~~(i) course descriptions appropriate to each level of education provided; and~~

~~(ii) course sequence and schedule.~~

~~(e) contracts for each clinical site;~~

~~(f) description of use of each clinical site by other nursing education programs;~~

~~(g) numbers of students to be placed at each clinical site;~~

~~(h) rationale for choice of each clinical site, including description of anticipated student experiences;~~

~~(i) initial program evaluation plan; and~~

~~(j) student policies for admission, progression, retention, and graduation.~~

~~(4) The board shall conduct an onsite program inspection prior to Phase II approval.~~

~~(6) Between six months and one year following the feasibility study, the board shall review and conduct a site visit utilizing the initial application and feasibility study for the proposed program, and may grant initial approval following board review. Any communications from the board must be sent to the program director and the leadership of the parent institution. Following board approval of Phase II application, the program may admit students. The board shall notify NCSBN for NCLEX testing purposes. Students graduating from a program under Phase II approval are eligible to sit for the NCLEX examination.~~

~~(7) Progress reports shall be made to the board as requested. The last step is Phase III, continued program approval. The board shall grant continued approval of a nursing education program upon:~~

~~(a) submission by the program of a self-study report and completion of a site survey by the board, following the graduation of the first class of students; and~~

~~(b) a board finding that the program is in substantial compliance with the nursing education program rules.~~

(8) ~~Following graduation of the first class, a self-study report of compliance with ARM Title 24, chapter 159, subchapter 6, shall be submitted and a site visit may be made~~ When the board does not grant continued program approval in Phase III, the program is subject to conditional approval or denial of approval, as outlined in ARM 24.159.640.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

24.159.630 SCHOOL SITE VISITS AND CONTINUED APPROVAL OF SCHOOLS NURSING EDUCATION PROGRAMS (1) ~~To ensure ongoing compliance with the board's statutes and rules, approved nursing education programs must be site visited and reevaluated for continued approval at least every ten years and in conjunction with the program's visit from an approved, recognized national nursing accreditation body. If the program is not nationally accredited, the board must perform approval site visits at least every five years. The board shall evaluate approved nursing education programs for continued approval by monitoring and analyzing program performance through:~~

~~(a) periodic survey visits and reports;~~

~~(b) accreditation visits and reports; and~~

~~(c) other sources of information regarding achievement of program outcomes, including:~~

~~(i) student retention and attrition;~~

~~(ii) faculty turnover;~~

~~(iii) complaints about the program from students, graduates, or faculty regarding program issues; and~~

~~(iv) trend data regarding NCLEX performance.~~

~~(2) Before a site visit, a school that is not nationally accredited must submit a self-study report to the board office providing evidence of compliance with the appropriate nursing education requirements. The school must forward four copies of the self-study report and four copies of the school catalog to the board office at least 60 days before a scheduled site visit. If a program holds national nursing accreditation, any self-study report used for the accrediting body must be submitted to the board office at least 60 days before the scheduled site visit. Continued program approval will be granted upon the board's verification that the program is in substantial compliance with the board's nursing education program rules.~~

~~(3) The site visit is performed by a qualified site visitor and the board's executive director on dates mutually agreeable to the board and the school.~~

~~(a) Schools must participate in scheduling the site visit.~~

~~(b) The site visitor's report must be made available to the school within 60 days of the site visit.~~

~~(c) The school may submit a written response to the site visitor's report for clarification and correction within 30 days of receipt of the report.~~

~~(d) Site visit reviewers must include, but not be limited to, the executive director of the board and an outside reviewer with expertise in relation to the type of program being reviewed.~~

~~(4) The board shall review the self-study report. Materials and site visit reports must be in the board office at least 30 days before the next scheduled board meeting.~~

~~(5) Following the board's review and decision, the board must send written notification regarding approval of the program and the board's recommendations to the program director and the leadership of the parent institution.~~

~~(6) The board office shall issue a certificate of approval to all schools continuing to meet the minimum nursing program requirements.~~

~~(7) The board may site visit a program at any time as deemed necessary by the board or at the request of the school.~~

~~(8) (3) Each nursing program must maintain an annual NCLEX pass rate rates are calculated each calendar year that is not ten percentage points or more below the national average pass rate for first-time test takers.~~

(a) The first year a program's average pass rate is ten percentage points or more below the national average pass rate, the program will be issued a letter of notice from the board.

(b) The second consecutive year a program's average pass rate is ten percentage points or more below the national average pass rate, the program will be placed on conditional approval status by the board per ARM 24.159.640. The program must submit to the board a written plan to improve the pass rate.

(c) The third consecutive year a program's average pass rate is ten percentage points or more below the national average pass rate, the program must submit a self-study report to the board. The board will may also perform a site visit.

(d) ~~Board decisions regarding compliance~~ Compliance with this requirement rule for RN programs having less than 21 students per year ~~and/or~~ and PN programs having less than 15 students per year will be based upon two consecutive years of NCLEX pass rates for first-time test takers.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

24.159.635 REQUIREMENTS FOR SPECIAL REPORTS REPORTING ON CHANGES AFFECTING PROGRAM INCLUDING PROGRAM EXPANSION

(1) The program director or academic chief officer is required to notify the board of any proposed substantive change affecting the nursing education program. Substantive changes include, but are not limited to:

(a) changes in legal status, control, or ownership, ~~or resources~~ of the institution;

(b) through (d) remain the same.

(e) additional geographic sites or locations; and

(f) ~~an expansion involving:~~ change in program director; or

~~(i) an increase in the number of students served by a program that equals or exceeds the numerator in the student to faculty ratio requirements for clinical settings set by the board and national nursing accrediting agency standards; and~~

~~(ii) the increase in (1)(f)(i) requires at least one of the following:~~

~~(A) addition of one or more faculty to the program;~~

~~(B) addition of clinical experiences at clinical agencies not currently used by the program; or~~

~~(C) addition of clinical experiences at clinical agencies currently used by the program, but utilizing nontraditional times or nontraditional instructional methods.~~

(g) major reduction in financial or other program resources.

~~(2) The board will review the special reports at their January or October board meetings. For programs under the jurisdiction of the Montana Board of Regents, the board will make a recommendation to the Montana Board of Regents concerning the substantive change. If the board does not complete its review and recommendations in January or October, it shall do so at its next quarterly meeting.~~

~~(3) The substantive change report must document how, if at all, the change affects the program's compliance with the board's statutes and rules.~~

~~(4) Continued approval of the program is contingent upon the program director's apprising the board of substantive changes.~~

~~(5) The program director shall contact the board office to determine whether a particular change constitutes a substantive change for submitting a report to the board.~~

~~(6) Fourteen copies of the special report must be sent to the board office for distribution to board members and staff. No further information will be considered by the board if not submitted at least 30 days before the meeting.~~

~~(7) (3) Prior board approval is required for program expansion. Only programs in full board approval status may request program expansion. A request for program expansion must be submitted a minimum of 30 days prior to the board meeting, at which the expansion will be considered.~~ For proposed program expansion, at least the following information must be included:

(a) remains the same.

~~(b) availability of qualified faculty;~~

(c) and (d) remain the same but are renumbered (b) and (c).

~~(e) (d) evidence of financial resources adequate for the planning, implementation, and continuation of the program expansion;~~

(e) evidence of the need for program expansion;

~~(f) anticipated expansion in student population and impact or relationship to current student population, including plans for student academic and financial support;~~

(g) remains the same.

~~(h) consideration description of how the proposed expansion may affect the existing nursing programs in the state, and indication that plans and the feasibility study regarding the proposed expansion have been shared with the directors of existing Montana programs;~~

~~(i) population data within the past three years and workforce supply and demand data from the past year documenting the need for the program change as it relates to plans for total state resources and nursing education needs within the state;~~

~~(j) (i) curriculum modifications required to accommodate the targeted student population; and~~

~~(k) (j) evidence showing the program's NCLEX pass rates being at or above the national average for at least three of the last five years; and~~

- (k) plan for continued assessment using program evaluation plan.
~~(8) Program expansion means offering additional degrees, adding geographic sites and locations, or otherwise expanding the program.~~
~~(9) The board shall approve the request prior to initiation of any requested change.~~
(10) remains the same but is renumbered (4).

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

24.159.640 CHANGE IN CONDITIONAL APPROVAL, STATUS

WITHDRAWAL OF APPROVAL, OR DENIAL (1) The board shall make a change in approval status when a school does not meet ~~all of~~ the requirements of the applicable statutes and rules to the satisfaction of the board. The board shall notify the school of a change in approval status and the time and manner in which the school must correct the deficiencies.

(2) remains the same.

~~(3) (4)~~ If the school does not correct the deficiencies within the time period and in the manner specified by the action plan, the board may require that the school stop admitting students until the deficiencies are corrected.

(3) The board may place a program on conditional approval when the board determines that an approved nursing education program is not in substantial compliance with the board rules for nursing education programs. The board will work with the governing academic institution to determine a mutually agreed upon time frame for the submission of an action plan to correct the identified program deficiencies.

~~(4) (5)~~ The board will not approve a school if requirements are continually ~~unmet~~. The board shall remove the school program from the list of approved ~~schools programs~~ and notify the applicable national accrediting body, NCSBN, and testing services that the program is no longer approved.

~~(5) (6)~~ If the board removes the school's Programs notified of a change in board approval status and/or notifies the school to stop admitting students, the ~~school~~ may request a hearing within 60 days, in accordance with the Montana Administrative Procedure Act and Title 37, chapter 1, part 3, MCA.

~~(6) (7)~~ Once a program corrects deficiencies are ~~corrected~~, the board shall reinstate the program to conditional or approval status for a minimum of one year or until the board determines the program has achieved sufficient compliance with these rules.

~~(7) (8)~~ A The board may not consider a program on conditional status cannot be considered for any type of program expansion.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

24.159.650 NURSING EDUCATION PROGRAM DIRECTOR

(1) Baccalaureate and associate degree RN programs must be administered by a full-time program ~~director~~ directors who shall be responsible for program

administration and preparation, presentation and administration of the budget of the nursing program. The directors of the professional programs shall possess the following licensure, education, and experience qualifications:

- (a) remains the same.
- (b) at least two years of experience in nursing practice; and
- (c) at least two years of experience in nursing education, including didactic and clinical teaching, at the level of the program's highest terminal degree; and
- (d) educational preparation or experience in registered nursing education, teaching, and learning principles for adult education, including but not limited to curriculum development and administration.

(2) The director is responsible to ensure that all faculty, CRRNs, and preceptors meet the requisite qualifications and maintain current records of those faculty qualifications, licenses, and evaluations.

(3) The director is responsible to ensure that clinical agency contracts are executed periodically, according to institutional or program policy, and contracts include at least the following elements:

- (a) clinical agency responsibilities related to supervision or guidance of students;
- (b) clinical agency requirements for student criminal history or health, such as immunizations, Tuberculosis testing, and any necessary follow-up, as required by the agency;
- (c) nursing education program requirements for student criminal history or health, such as immunizations, Tuberculosis testing, and any necessary follow-up actions, as required by the program's student policies; and
- (d) clinical agency requirements for scheduling of students for clinical experiences.

(2) through (4)(c) remain the same but are renumbered (4) through (6)(c).

(d) at least two years of experience in nursing education, including didactic and clinical teaching in the level of preparation of program graduates.

(5) remains the same but is renumbered (7).

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.655 NURSING EDUCATION FACULTY RESPONSIBILITY

(1) remains the same.

~~(2)~~ (3) Faculty shall have primary responsibility for the development and ~~conduct~~ provision of the academic program(s), including participation in program policy development.

(2) Clinical and didactic faculty, CRRNs, and preceptors shall hold unencumbered Montana nursing licenses to practice nursing.

(3) remains the same but is renumbered (4).

~~(4)~~ (5) Faculty members who have responsibility for clinical teaching shall have relevant education and/or experience and meet all of the faculty qualifications for the program level in which they are teaching.

(5) and (6) remain the same but are renumbered (6) and (7).

- (a) planning, implementing, and evaluating learning experiences based on each course's objectives;
- (b) remains the same.
- (c) providing for student and peer evaluation of teaching effectiveness; and
- ~~(d) evaluating student achievement in terms of education objectives;~~
- ~~(e) providing opportunity for creative student activities that contribute to positive changes in nursing, nursing education, or health care;~~
- ~~(f) providing service to the parent institution, nursing program, profession, and community; and~~
- (g) remains the same but is renumbered (d).
- (7) and (7)(a) remain the same but are renumbered (8) and (8)(a).
- (b) didactic and clinical teaching;
- (c) program revision evaluation and performance improvement;
- (d) remains the same.
- (e) ~~guidance of students~~ student advising;
- (f) and (g) remain the same.
- (h) participation in continuing education activities, as required by these rules.
- (8) and (9) remain the same but are renumbered (9) and (10).

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.656 FACULTY QUALIFICATION REPORT (1) The ~~school~~ program must submit a faculty qualification form for each new faculty member when the faculty appointment becomes effective. Such forms are available from the board office and on the board's web site and must be used by the school.

(2) The education committee of the board shall accept or reject the faculty qualifications and make recommendations for ratification by the full board. The executive director may approve faculty qualifications when all faculty qualification requirements are met. All faculty qualifications that do not indicate full compliance with these rules shall be reviewed by the board.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-204, 37-8-301, 37-8-302, MCA

REASON: The board is amending this rule to authorize the board's executive director to approve faculty qualifications forms that appear to be sufficient. The board concluded that this amendment is reasonably necessary to maintain the board's heavy work load and because the executive director is responsible for assisting the board in administrative functions.

24.159.659 FACULTY FOR REGISTERED NURSING EDUCATION PROGRAMS (1) and (1)(a) remain the same.

- (b) have preparation for teaching in their respective area of responsibility including at least two years of registered nursing practice; and
- (c) remains the same.

(2) Faculty members ~~hired without a graduate degree or who hold a master's or doctorate in a health-related field other than nursing~~ who do not meet faculty qualifications may be considered by the board and, if approved, shall not exceed the number or percentage specified by this rule.

(3) Faculty members not holding any master's degree will have three years from the date of ~~hire~~ board approval of waiver to obtain a master's degree in nursing, as set forth by the faculty qualifications.

(4) through (7) remain the same.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.662 FACULTY FOR PRACTICAL NURSING EDUCATION

PROGRAMS (1) All nursing faculty, including part-time, shall hold at least a baccalaureate ~~in nursing~~ or a master's degree in nursing from a nationally accredited program supplemented by courses in curriculum development, principles and methods of teaching, and measurement and evaluation.

(2) remains the same.

(a) have at least two years experience in ~~registered~~ nursing practice ~~within the last five years~~; and

(b) remains the same.

(3) When providing direct patient care, no more than ten students may be supervised at a time by a faculty member. The number of students must be determined by the educational and clinical resources and faculty sufficient to meet the goals of the program and the requirements of the board, including ARM 24.159.666, pertaining to the use of CRRNs.

(4) remains the same.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.665 PRECEPTORS IN NURSING EDUCATION PROGRAMS

(1) remains the same but is renumbered (3).

(a) ensuring safe, accessible and appropriate supervision based on client health status, care setting, course objectives, and student level of preparation; ~~and~~ ~~(b)~~ (d) providing the lecture and laboratory portions of a course.

(b) selecting the individual preceptors and ensuring appropriate preceptor qualifications and scope of responsibility;

(c) ensuring that the preceptor demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student; and

(1) Clinical preceptors may be used to enhance, but not replace, faculty-directed clinical learning experiences.

(2) ~~In registered nursing education programs, preceptors may assist with clinical teaching provided the preceptor:~~ Preceptor utilization is limited to no more than 20 percent of a student's total clinical hours in the program.

- and
- ~~(a) holds a current unencumbered license as a registered nurse in Montana;~~
 - ~~(b) works with students on a one-to-one basis in the clinical setting.~~
 - ~~(3) In practical nursing education programs, preceptors may assist with clinical teaching provided the preceptor:~~
 - ~~(a) holds a current unencumbered license as a registered nurse or practical nurse in Montana; and~~
 - ~~(b) works with students on a one-to-one basis in the clinical setting.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.666 USE OF CLINICAL RESOURCE REGISTERED NURSES (CRRNS) IN NURSING EDUCATION PROGRAMS (1) CRRNs may be used to enhance, but not replace, faculty-directed clinical learning experiences. A clinical resource registered nurse (CRRN) is an RN with an unencumbered Montana nursing license who provides supervision, demonstration, and collaborative evaluation of direct patient care student performance in a clinical or laboratory setting to students enrolled in a nursing education program. The CRRN is solely responsible for students and must have no concurrent clinical responsibilities.

(2) The supervising faculty member is responsible for all students in the clinical setting, including those supervised by the CRRNs. The faculty may supervise no more than two CRRNs. One faculty member cannot have responsibility for more than 20 students at one time. The maximum number of nursing students a CRRN may ~~work with~~ supervise at any one time is ten.

(3) Although a CRRN is not considered to be a faculty member of a program, a CRRN may be used by the program to maintain a ten-to-one student-to-instructor supervision ratio in a clinical ~~or laboratory~~ setting.

(4) remains the same.

~~(a)~~ (b) ensuring safe, accessible, and appropriate supervision based on client health status, care setting, course objectives, and student level of preparation; and

(a) assuring that assigned duties are appropriate to the CRRN scope of responsibilities;

~~(b)~~ (c) the lecture, clinical, and laboratory portions of a course, including actively teaching in the course for which the clinical experience is assigned- ; and

(d) performing the summative clinical evaluation based on individual course objectives and student clinical performance.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

24.159.670 CURRICULUM GOALS AND GENERAL REQUIREMENTS FOR PROFESSIONAL NURSING EDUCATION IN BACCALAUREATE AND ASSOCIATE DEGREE PROGRAMS (1) remains the same.

(2) The faculty shall develop, review, and update the curriculum on an ongoing basis. The curriculum for ~~the professional~~ nursing educational programs must meet the following general criteria:

(a) reflect the philosophy guiding principles, organizational framework, purpose, and educational objectives of the nursing education program and be consistent with the laws statutes and rules governing the practice of professional nursing, as well as the national standards and codes of ethics;

(b) contain content, clinical experiences, and strategies of active learning experiences designed to facilitate student achievement of the educational objectives directly related to program or course goals and objectives, in order to develop safe and effective nursing practice; and

(c) contain learning experiences and instructional methods appropriate to fulfill curriculum objectives; evidence of current trends and professional standards and practice guidelines.

~~(d) reflect future nursing practice of the graduate;~~

~~(e) contain adequate nursing course work and clinical experiences to develop safe and effective nursing practice; and~~

~~(f) address present and future health care needs.~~

(3) The curriculum shall must include concepts related to the promotion, maintenance, and restoration of the health of clients care of individuals across the lifespan. Content areas and learning activities include including, but are not limited to:

(a) ~~healthy lifestyles and risk factors~~ health maintenance promotion and restoration;

~~(b) health needs and alterations across the lifespan~~ risk reduction;

~~(c) acute and chronic health needs~~ disease prevention; and

~~(d) health needs related to social and environmental trends~~ palliative care.

~~(4) The curriculum shall include nonnursing courses that provide knowledge in relevant physical sciences, social sciences, and arts and humanities.~~

~~(a) Physical science course content shall include, but not be limited to:~~

~~(i) chemistry;~~

~~(ii) anatomy;~~

~~(iii) physiology;~~

~~(iv) microbiology;~~

~~(v) nutrition;~~

~~(vi) mathematics;~~

~~(vii) physics;~~

~~(viii) pharmacology; and~~

~~(ix) pathophysiology.~~

~~(b) Social sciences, and arts and humanities course content shall include, but not be limited to:~~

~~(i) human growth and development;~~

~~(ii) psychology;~~

~~(iii) sociology;~~

~~(iv) communications;~~

~~(v) ethics; and~~

~~(vi) economics.~~

~~(5) (4) The length, organization, sequencing, and placement of courses must be consistent with the philosophy guiding principles and objectives of the program. Course organization and sequencing shall assure that prerequisite previously~~

~~learned concepts and understanding are used and are further developed as the program progresses. Course instruction should focus on understanding and application of knowledge, and extend throughout the program.~~

~~(6) remains the same but is renumbered (5).~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.674 PROFESSIONAL NURSING CURRICULUM GOALS SPECIFIC TO BACCALAUREATE DEGREE REGISTERED NURSE (1) ~~The professional nurse who is a baccalaureate degree nurse graduate shall be prepared to plan, deliver, and coordinate care for clients including individuals, families, and communities in a variety of structured and unstructured settings with an emphasis on care management, complex care situations, and clients with unpredictable outcomes. The baccalaureate degree nurse functions as a change agent in the health care system and utilizes nursing research findings in the delivery of care for the multifaceted role of professional nursing as defined in 37-8-102, MCA.~~

(2) The graduate will be able to assess, plan, implement, and evaluate direct and indirect care across a variety of structured and unstructured settings to individuals, families, groups, communities, and diverse populations.

(3) Based upon a curriculum founded in liberal arts, including relevant courses in natural sciences, social sciences, arts and humanities, the graduate shall foster and support active client participation in determining health care decisions.

(4) Using clinical judgment based upon current knowledge, theory, research, as well as values, ethics, science, and technology, the graduate shall function as a provider, designer, manager, and coordinator of care.

(5) With an emphasis on population-based care and respect for the environment, the graduate will be prepared to lead interdisciplinary health care teams and partnerships, as they advocate for and shape complex health care delivery systems.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.677 PROFESSIONAL NURSING CURRICULUM GOALS SPECIFIC TO ASSOCIATE DEGREE REGISTERED NURSE (1) ~~The role of the associate degree nurse graduate is to provide direct care to clients, individuals, or groups, in a variety of structured settings with clear policies and procedures. Within this context, the curriculum must relate to the roles of the provider of the associate degree nurse as provider of care, manager of care, and member of the discipline of nursing The professional nurse who is an associate degree graduate shall assess clients and formulate a nursing diagnosis and shall plan and implement and evaluate nursing care provided in structured health care settings.~~

(2) The graduate will practice within the ethical, legal, and regulatory frameworks of nursing and provide care to individuals, groups, and families, while utilizing a knowledge base from the natural and social sciences and humanities.

(3) The graduate utilizes standards of nursing practice, demonstrates accountability for nursing care given by self and/or delegated to others, advocates for client rights, and participates in lifelong learning.

(4) The graduate utilizes assessment skills to collect, analyze, and synthesize relevant data to formulate clinical decisions and caring interventions.

(5) The graduate works together with other members of the health care team to manage the human, physical, financial, and technical needs of the client.

~~(a) As a provider of care, the associate degree nurse must demonstrate the following:~~

- ~~(i) critical thinking;~~
- ~~(ii) accountability;~~
- ~~(iii) clinical decision-making through use of the nursing process;~~
- ~~(iv) effective communication with clients, families, and health team members;~~
- ~~(v) teaching and collaboration with the client and family;~~
- ~~(vi) collaboration with members of the health team; and~~
- ~~(vii) sensitivity to individual and cultural diversity.~~

~~(b) As a manager of care, the associate degree nurse must demonstrate the following:~~

~~(i) coordination of care for a group of clients using collaboration and consultation;~~

- ~~(ii) organization and delegation of nursing care;~~
- ~~(iii) information management;~~
- ~~(iv) client advocacy; and~~
- ~~(v) evaluation of health care delivery using client-centered outcomes.~~

~~(c) As a member of the discipline of nursing the associate degree nurse must demonstrate basic knowledge in the following:~~

- ~~(i) self-assessment and development and continuous learning;~~
- ~~(ii) ethical-legal framework for nursing practice;~~
- ~~(iii) advancement of nursing practice through professional activities;~~
- ~~(iv) political, economic, and societal forces affecting nursing practice and health care delivery; and~~
- ~~(v) health care change and nursing research.~~

~~(2) Nonnursing courses must provide graduates with basic knowledge in the relevant physical sciences, social sciences, and arts and humanities.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.680 CURRICULUM GOALS AND REQUIREMENTS FOR PRACTICAL NURSING EDUCATION PROGRAMS

~~(1) The primary role of the practical nurse graduate is to provide nursing care for clients in structured health care settings who are experiencing common, well-defined health problems. In their roles as members of the discipline of nursing, practical nurses actively participate in and subscribe to the legal and ethical tenets of the discipline. The practical nurse functions under supervision as set forth in 37-8-102, MCA. The practical nursing graduate, utilizing a knowledge base from the natural and social sciences shall be~~

prepared to provide direct care to clients in structured health settings who are experiencing common, well-defined health problems.

(2) The graduate contributes to the nursing assessment by collecting and reporting accurate subjective and objective data.

(3) The graduate participates in the development of the plan of care, as well as the implementation of the plan.

(4) The graduate contributes to evaluation of the response to care and any modifications of care indicated.

(5) The graduate adheres to the statutes and regulations governing nursing within the legal and ethical boundaries of practical nurse practice.

(6) The graduate functions under the supervision of the registered nurse, physician, naturopathic physician, physician assistant, optometrist, advanced practice registered nurse, dentist, osteopath, or podiatrist as provided by law.

(7) The graduate is accountable for nursing care provided by self and/or delegated to others.

(8) The graduate actively advocates on behalf of clients, families, and others.

(9) The graduate recognizes the benefit and need for continued learning in order to maintain knowledge and skills.

~~(2) The curriculum must include basic knowledge of:~~

~~(a) nursing process;~~

~~(b) client's physiological needs;~~

~~(c) client's psychosocial needs; and~~

~~(d) maintenance and promotion of health.~~

~~(3) The curriculum must provide for progressive development of knowledge, skills, and professional conduct.~~

~~(4) The choice and placement of courses, selection of learning activities, and the organization of these must provide continuity, sequence, and integration in the total curriculum.~~

~~(5) Learning experiences must be based on written behavioral objectives which include demonstration of knowledge, comprehension, and application.~~

~~(6) The program must include practical nursing theory and guided clinical practice based on the nursing process. It must include the content essential to current practice in practical nursing.~~

~~(7) The practical nurse student shall successfully complete coursework related to the role of charge nurse in the following areas to prepare the graduate practical nurse to serve as a charge nurse:~~

~~(a) leadership;~~

~~(b) telephone orders;~~

~~(c) transcribing orders;~~

~~(d) documentation;~~

~~(e) nursing process;~~

~~(f) prioritization;~~

~~(g) organization; and~~

~~(h) delivery of long-term care.~~

~~(8) Content of the course work related to the role of charge nurse shall be developed in recognition of the role of charge nurse as supervisor of care provided as well as care needed, assessment of clients, notifying the professional nurse~~

supervisor, notifying physicians, and the administration of medications and treatments.

~~(9) The practical nurse student shall successfully complete courses in the following areas to prepare the graduate practical nurse to administer intravenous therapy:~~

- ~~(a) fluid and electrolytes;~~
- ~~(b) the following types of intravenous solutions:~~
 - ~~(i) isotonic;~~
 - ~~(ii) hypotonic; and~~
 - ~~(iii) hypertonic;~~
- ~~(c) infection control;~~
- ~~(d) pharmacology;~~
- ~~(e) technology and clinical application;~~
- ~~(f) parenteral nutrition;~~
- ~~(g) documentation;~~
- ~~(h) nursing process in relation to IV therapy; and~~
- ~~(i) institutional policies.~~

~~(10) Content of the courses shall be developed in recognition of the role of the practical nurse to perform intravenous therapy in accordance with the standards set forth at ARM 24.159.1011.~~

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, MCA

24.159.1021 TEMPORARY PRACTICE PERMIT (1) remains the same.

(a) application for Montana licensure, supporting credentials, and fee have been submitted and approved by the board; ~~and~~

(b) the graduate has also applied for and been accepted for a licensing examination scheduled no later than 90 days following graduation; ~~and~~

(c) the graduate has submitted a complete application for a temporary permit.

(2) and (3) remain the same.

(4) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice practical nursing provided the applicant has submitted a completed application as described in ARM 24.159.1028 and that the initial screening by board staff shows no current discipline as identified in ARM 24.159.1028 in the last two years. Online verification of licensure from a U.S. board of nursing web site may serve as verification for the purpose of issuing a temporary permit. The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first. In the event that neither contingency has occurred within 90 days of issuance of the temporary permit to the endorsement applicant, the temporary permit shall expire on the 90th day following its issuance unless an extension is granted by the board.

(5) Any A practical nurse who is employed under a temporary practice permit shall function only under the direct supervision of a registered nurse, advanced practice registered nurse, physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist, who is on the premises where and when the permittee is working and is specifically assigned the responsibility of

supervising the performance of the temporary practice permittee. The supervisor must hold an unencumbered Montana license unless exempt as provided in Title 37, MCA, relative to the supervisor's profession or occupation.

AUTH: 37-1-319, 37-8-202, MCA

IMP: 37-1-305, 37-1-319, 37-8-103, MCA

REASON: The board is amending this rule and ARM 24.159.1221 regarding temporary practice permits for both LPNs and RNs. Submission of a temporary permit application has always been a requirement, but had not been previously set forth in rule. The board is also amending these rules to accept web-based licensure verification until hard copy verification is received from those state boards of nursing that do not participate in the NURSUS database. This amendment will help prevent delays in issuing temporary practice permits to qualified, routine applicants. The board will continue to require the submission of hard copy licensure verification and information on discipline from the primary source to complete an applicant's file.

Further, the board is amending these rules to specify that nurses working under a temporary practice permit must do so only under the direct supervision of certain health care providers who hold unencumbered licenses. The board is expanding the acceptable supervisors to acknowledge additional health care professionals with appropriate qualifications and experience to adequately supervise temporary permittees. The board concluded that direct supervision is necessary because it ensures that the supervisor is on site and easily accessible to the permit holder. Because temporary permit holders are either new graduates or nonroutine endorsement applicants, the board concluded that requiring supervisors with unencumbered licensure is reasonably necessary to provide the best, most qualified supervision for temporary practice permittees and ensure safe, quality care of patients.

24.159.1028 LICENSURE BY ENDORSEMENT REQUIREMENTS

(1) and (1)(a) remain the same.

(i) ~~a picture~~, social security number, ~~birthdate~~ birth date, and documentation of name change;

(ii) through (4) remain the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-304, MCA

REASON: To better facilitate the online licensure application process, the board determined it is reasonably necessary to amend this rule and remove the requirement for submission of the applicant's picture. The board further determined that requiring photographs serve no important public safety purpose.

24.159.1029 FOREIGN-EDUCATED APPLICANTS FOR PRACTICAL NURSE LICENSURE REQUIREMENTS (1) through (2)(b) remain the same.

(c) provide a ~~CGFNS credentials evaluation service (CES) report based on the CGFNS's healthcare profession and science course-by-course evaluation,~~

verifying the applicant's nursing education credentials and comparing the applicant's nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign-educated applicant if denial is deemed by the board to be warranted by the ~~CGFNS~~ CGES course-by-course evaluation report; and

(d) successfully complete an English proficiency examination recognized by ~~CGFNS~~ the board-approved foreign education evaluator, except as provided in (4).

(3) through (3)(b) remain the same.

(c) provide a ~~CGFNS-CGES course-by-course evaluation~~ report prepared by a board-approved foreign education evaluator based on the CGFNS's healthcare profession and science course-by-course evaluation, verifying the applicant's nursing education credentials and comparing the applicant's nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign-educated applicant if denial is warranted by the ~~CGES~~ course-by-course evaluation report; and

(d) successfully complete an English proficiency examination recognized by ~~CGFNS~~ the board-approved foreign education evaluator, except as provided in (4).

(4) through (4)(g) remain the same.

(5) A foreign education evaluator may apply to the board to become a board-approved foreign education evaluator for purposes of this rule. Approval is left to the sole discretion of the board on a case-by-case basis. If a foreign education evaluator is approved by the board, it will be added to a list maintained at the board office. Each board-approved foreign education evaluator must maintain current contact information at the board office as requested by the board, and is subject to removal by the board upon review.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-405, 37-8-415, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.159.1229 to address foreign-educated nurses who use providers other than CGFNS (Commission on Graduates of Foreign Nursing Schools) to evaluate their educations. The board concluded that other non-CGFNS evaluators may provide adequate and acceptable education evaluation services for the board to rely upon in making licensing decisions. The board is therefore amending these rules to allow the board to review and approve foreign education evaluators and provide additional flexibility for foreign-educated nurse applicants.

24.159.1221 TEMPORARY PRACTICE PERMIT (1) remains the same.

(a) application for Montana licensure, supporting credentials, and fee have been submitted and approved by the board; ~~and~~

(b) the graduate has ~~also~~ applied for and been accepted for a licensing examination scheduled no later than 90 days following graduation; ~~and~~

(c) the graduate has submitted a complete application for temporary permit.

(2) and (3) remain the same.

(4) An applicant for licensure by endorsement in Montana may be granted a temporary permit to practice registered nursing provided the applicant has submitted a completed application as described in ARM 24.159.1228 and that the initial

screening by board staff shows no current discipline as identified in ARM 24.159.1228 in the last two years. Online verification of licensure from a U.S. board of nursing web site may serve as verification for the purpose of issuing a temporary permit. The temporary permit will remain valid until a license is granted or until notice of proposal to deny license is served, whichever occurs first. In the event that neither contingency has occurred within 90 days of issuance of the temporary permit to the endorsement applicant, the temporary permit shall expire on the 90th day following its issuance unless an extension is granted by the board.

(5) ~~Any~~ A registered nurse who is employed under a temporary practice permit shall function only under the direct supervision of a registered nurse, advanced practice registered nurse, physician, naturopathic physician, physician assistant, optometrist, dentist, osteopath, or podiatrist, who is on the premises where and when the permittee is working and is specifically assigned the responsibility of supervising the performance of the temporary practice permittee. The supervisor must hold an unencumbered Montana license unless exempt as provided in Title 37, MCA, relative to the supervisor's profession or occupation.

AUTH: 37-1-319, 37-8-202, MCA

IMP: 37-1-305, 37-1-319, 37-8-103, MCA

REASON: See reasonable necessity for ARM 24.159.1021.

24.159.1228 LICENSURE BY ENDORSEMENT REQUIREMENTS

(1) and (1)(a) remain the same.

(i) ~~a picture, social security number, birthdate~~ birth date, and documentation of name change;

(ii) through (4) remain the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-304, MCA

REASON: To better facilitate the online licensure application process, the board determined it is reasonably necessary to amend this rule and remove the requirement for submission of the applicant's picture. The board further determined that requiring such photographs serve no important public safety purpose.

24.159.1229 FOREIGN-EDUCATED APPLICANTS FOR REGISTERED NURSE LICENSURE REQUIREMENTS (1) through (2)(b) remain the same.

(c) be certified by ~~the Commission on Graduates of Foreign Nursing Schools (CGFNS)~~ a board-approved foreign education evaluator as having successfully completed ~~its certification program (CP) consisting of:~~

(i) an English language proficiency examination recognized by the board-approved foreign education evaluator, except as provided under (4);

(ii) ~~the CGFNS~~ a qualifying examination (also, which may be referred to as a NCLEX predictor exam or screening exam); and

(iii) a credentials review course-by-course evaluation performed by the board-approved foreign education evaluator verifying the applicant's nursing

education credentials and comparing the applicant's foreign nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign-educated applicant if denial is deemed by the board to be warranted by the ~~CGFNS credentials evaluation service (CES)~~ course-by-course report.

(3) through (3)(c) remain the same.

(d) ~~complete the CGFNS CES healthcare profession and science~~ provide a course-by-course evaluation verifying the applicant's nursing education credentials and comparing the applicant's foreign nursing education with the U.S. nursing education standards. The board may deny licensure to a foreign-educated applicant if denial is warranted by the ~~CGFNS~~ course-by-course evaluation report; and

(e) successfully complete an English proficiency examination recognized by ~~CGFNS~~ the board-approved foreign education evaluator.

(4) through (4)(g) remain the same.

(5) A foreign education evaluator may apply to the board to become a board-approved foreign education evaluator for purposes of this rule. Approval is left to the sole discretion of the board on a case-by-case basis. If a foreign education evaluator is approved by the board, it will be added to a list maintained at the board office. Each board-approved foreign education evaluator must maintain current contact information at the board office as requested by the board and is subject to removal by the board upon review.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-101, 37-8-405, 37-8-415, MCA

REASON: See reasonable necessity for ARM 24.159.1029.

24.159.1605 STANDARDS RELATED TO THE FACILITY'S CHIEF NURSING OFFICER REGARDING DELEGATION PRACTICES (1) through (1)(e)(iii) remain the same.

(f) a name badge which includes, at a minimum, first name, first initial of and last name, and specific title, in standard, bold face font no less than 18 point is provided to the UAP and is worn at all times when on duty, with the exception of settings requiring sterile attire;

(g) through (2) remain the same.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-131, 37-8-202, MCA

REASON: The board determined that the identification of unlicensed assistive personnel (UAP) by first name and last initial on a name badge is sufficient to identify these caretakers for patients and the public. In all cases, the public has a right to know that a caretaker is an unlicensed person, and the health care facility is responsible for selecting an appropriate job title for the UAP. The board determined that UAPs, similar to nurses, may feel vulnerable to unwanted, inappropriate, or criminal contact initiated by patients or members of the public, and is amending this rule to no longer require identification on a name badge by first and last name.

24.159.2020 NONDISCIPLINARY TRACK (1) remains the same.

(a) any licensee who identifies a drug/alcohol problem and requests admission to the NAP and meets the admission criteria of ARM 24.159.2021; or
(b) and (2) remain the same.

(3) When a complaint is filed against a licensee who has been successfully discharged from nondisciplinary NAP, the licensee's prior participation in NAP may be revealed to the board.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board is amending this rule to enhance the public's protection regarding licensees previously discharged from nondisciplinary NAP. The board concluded that being aware of a licensee's past successful nondisciplinary NAP discharge, provides valuable insight when considering the new complaint and determining appropriate sanctions.

24.159.2021 ADMISSION CRITERIA - NONDISCIPLINARY TRACK (1) and (2) remain the same.

~~(3) A licensee who has diverted controlled substances or caution legend drugs for purposes of sale, distribution, or personal use is not eligible for the nondisciplinary track.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: The board is striking (3) from this rule so that previous drug diversion is no longer an absolute bar to a nurse's admittance to the nondisciplinary track of NAP. The board notes that drug diversion is a relatively common behavior of chemically dependent nurses, and licensees are frequently brought to the board for this reason. Because nurses enter the nondisciplinary track of NAP by self-referral or employer-referral, this option expedites enrollment in the NAP monitoring program and thus improves the public's protection by getting the participants the monitoring sooner than through the full disciplinary process.

24.159.2301 CONDUCT OF NURSES (1) remains the same.

(a) While working as a nurse, ~~all nurses~~ the nurse will identify ~~themselves~~ himself or herself with a name badge disclosing, at a minimum, their first name, first initial of and last name, ~~as it appears on their nursing license,~~ and license type. The identification badge will be written in a standard bold face font with a font size of no less than 18 point.

(b) remains the same.

(c) All nurses are required to report unprofessional conduct of nurses to the board. The board does not accept anonymous complaints.

(2) through (2)(s) remain the same.

(t) failing to participate and cooperate in a Department of Labor and Industry investigation; ~~and~~

(u) failing to report to the board office within 30 days of the date of the final judgment, order, or agency action, any malpractice, professional misconduct, criminal, or disciplinary action in which the nurse or the nurse's employer, on account of the nurse's conduct, is a named party; and

(v) violating a state or federal statute while performing or attempting to perform the practice of nursing.

AUTH: 37-1-319, 37-8-202, MCA

IMP: 37-1-316, 37-1-319, 37-8-202, MCA

REASON: Because nurses may feel vulnerable to unwanted, inappropriate, or criminal contact initiated by patients or members of the public, the board is amending this rule to no longer require identification on a name badge by full first and last name. The board determined that because a nurse often uses a less formal first name while working, identification by first name and last initial on a name badge is sufficient for nurse identification. The board notes that if a person wishes to file a complaint against a nurse, the health care facility will be able to sufficiently identify the nurse for that purpose, as well.

The board determined it is reasonably necessary to impose a reporting requirement upon licensees. Because misconduct of nurses is often first detectable by other nurses, the board concluded that requiring that nurses help monitor conduct of other nurses advances the public's protection.

The board is also amending this rule determined to preclude the board's acceptance of anonymous complaints. The board determined that the burden of investigating and prosecuting anonymous complaints against nurses outweighs the privacy protections afforded by the anonymity of the complainant. Considering that the complainant is, in most cases, an important witness and source of facts necessary to a successful complaint, the board concluded the public interest is best served by requiring that all complaints identify the complainant.

The board is amending this rule to clarify that conduct in violation of federal and state statutes is considered unprofessional conduct and grounds for disciplinary action by the board. The board determined it is reasonably necessary to add a broader prohibition against illegal conduct at (2)(v) to address arguments that have previously come before the board to avoid discipline under more specific statutes and rules.

5. The proposed new rules provide as follows:

NEW RULE I NURSING EDUCATION PROGRAM SURVEYS (1) To ensure ongoing compliance with the board's statutes and rules, approved nursing education programs must be surveyed onsite and reevaluated for continued approval at least every ten years and in conjunction with the program's visit from an approved, recognized national nursing accreditation body. If the program is not nationally accredited, the board must perform site visits at least every five years. Each time a program survey is performed, the entire program is evaluated for all components under board jurisdiction.

(2) Before a survey, a school that is not nationally accredited must submit a self-study report to the board office providing evidence of compliance with the appropriate nursing education requirements. The school must forward the number of copies and format of the self-study report and related documents as determined by the board, to the board office at least 60 days before a scheduled site visit. If a program holds national nursing accreditation, the board will accept the same self-study report and related documents submitted to the accrediting body. The board will designate the number of copies required, which shall be submitted to the board office at least 60 days before the scheduled site visit.

(3) The onsite survey is performed by a qualified site visitor and the board's executive director or education consultant on dates mutually agreeable to the board and the program. The site visitor must have expertise in relation to the type of program being reviewed.

(a) The surveyors' draft report must be made available to the program within 30 days of the site visit.

(b) The program may submit a written response to the draft survey report within 20 days to address identified program deficiencies and to present supplemental information.

(c) Taking into account the supplemental information provided by the program, the surveyors will finalize the survey report within 30 days of the program response. The final survey report will be made available to the program within ten days of report submission to the board.

(d) The program may submit a written response to the final survey report only for clarification and correction of survey findings within 30 days of receipt of the final report. The program's response to the final survey report may not be more than ten pages in length, and if supplemental information or a response to the draft or final survey report is not submitted in compliance with these rules, it may be returned to the program or disregarded by the board.

(4) The board shall review the final survey report and the program's responses before making a finding regarding whether the program is in substantial compliance with the nursing education program rules.

(5) Following the board's review and decision, the board must send written notification regarding approval or withdrawal of approval of the program and the board's recommendations to the program director and the leadership of the parent institution.

(6) The board office shall issue a certificate of approval to all schools continuing to meet the minimum nursing program requirements.

(7) The board may site visit a program at any time, as deemed necessary by the board or at the request of the school.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: As part of the comprehensive revision of the nursing education program rules, the board is proposing New Rule I to set forth the minimum standards required with respect to survey reports. This new rule includes much of the survey report

provisions previously contained in ARM 24.159.630, with modifications to improve clarity of the process for submission of acceptable survey reports to the board.

NEW RULE II PROGRAM CLOSURE AND RECORDS STORAGE (1) A nursing education program may close voluntarily or may be closed due to withdrawal of board approval. Prior to closure, the nursing education program must provide for:

- (a) maintenance of the standards for nursing education during the transition to closure;
- (b) placement for students who have not completed the program; and
- (c) arrangements for the secure storage and access to academic records and transcripts.

AUTH: 37-8-202, 37-8-301, MCA

IMP: 37-8-202, 37-8-301, 37-8-302, MCA

REASON: As part of the comprehensive revision of the nursing education program rules, the board is proposing New Rule II to specifically set forth the requirements that relate to a program's closure, whether the closure is voluntary or due to withdrawal of board approval.

NEW RULE III STANDARDS FOR CONTINUING EDUCATION

- (1) Continuing education for nurses is formal training that:
 - (a) provides new knowledge and skills to assist with advanced clinical decision making;
 - (b) offers greater depth of knowledge and skills in a particular area of nursing practice;
 - (c) enhances professional attitudes and behaviors;
 - (d) advances career goals;
 - (e) promotes professional development and currency in nursing practice;
 - (f) supports innovation and creativity in nursing practice;
 - (g) implements change within the individual's nursing practice and within healthcare; or
 - (h) addresses new and developing standards of nursing practice.
- (2) To qualify as contact hours, continuing education courses must be approved by an accrediting organization or provided by an academic institution of higher learning or an APRN certifying body.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: Following requests by members of the nursing profession and consideration by the board's education committee, the board is proposing New Rules III through VI to implement continuing education as a requirement for maintaining licensure. The board determined that requiring continuing education for licensees will help to ensure that licensees maintain continued competence in their particular areas of nursing practice and thus raise the quality of Montana's nursing care.

The board notes that in the past, availability of accredited courses was a concern, particularly for the smaller rural healthcare facilities. Now, more continuing education opportunities are available and accessible by means of electronic technologies that have become integral to the nursing profession.

NEW RULE IV BIENNIAL CONTINUING EDUCATION REQUIREMENTS

- (1) All licensees must verify on the renewal application the completion of continuing education contact hours during the two-year license renewal period:
 - (a) practical nurses must complete a minimum of 24 contact hours during the two-year renewal period;
 - (b) registered nurses must complete a minimum of 24 contact hours during the two-year renewal period; and
 - (c) APRNs must complete a minimum of 40 contact hours during the two-year renewal period that meet the requirements set forth in ARM 24.159.1425, in addition to the ten contact hours of the continuing education required for maintaining prescriptive authority, as set forth in ARM 24.159.1468.
- (2) Excess continuing education contact hours may not be carried over for credit during the following two-year renewal period.
- (3) The board may prorate the contact hour requirement for nurses who are licensed for less than two years.
- (4) Licensees holding dual nursing licensure are required to meet the continuing education requirements for only the most advanced level of licensure.
- (5) Licensees seeking reactivation or reinstatement of an inactive license must complete 24 contact hours of continuing education during the two-year period, immediately preceding application for reinstatement.
- (6) Licensees may submit a written request prior to the renewal deadline for a waiver or time extension for all or a portion of continuing education requirements on the grounds of extreme hardship.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, MCA

NEW RULE V NONACCREDITED ACTIVITIES (1) The following activities may not be used by a licensee to satisfy the continuing education requirements set forth in this chapter:

- (a) classes in basic life support, first aid, or cardiopulmonary resuscitation;
- (b) repetition of a continuing education class with identical content and course objectives within a single renewal period;
- (c) agency-specific orientation or in-service program designed for work at a specific institution or for a specific employer that teaches and tests for skill competency or addresses institution-based or employer-based standards of nursing practice;
- (d) personal development activity that educates individuals on topics pertaining to financial management, personal hygiene or beautification, personal conduct, or other topics that do not pertain to the practice of nursing or healthcare;

- (e) self-directed study such as reading of texts or journal articles for which continuing education contact hours have not been awarded by an accrediting organization;
- (f) participation in clinical practice or research for which contact hours have not been awarded by an accrediting organization;
- (g) attendance at professional meetings or conventions, except those portions for which continuing education contact hours have been awarded by an accrediting organization;
- (h) participation in community service or volunteer practice; and
- (i) participation as a member in a professional organization.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

NEW RULE VI AUDITING OF CONTACT HOURS (1) The board may conduct a retrospective random audit of the completion of continuing education by licensees during each two-year renewal period.

(2) The board shall notify licensees of the audit by U.S. mail.

(3) Licensees shall respond to the notice of audit within 30 days by submitting proof of completion of continuing education for the renewal period specified by the board. Proof may consist of copies of the continuing education certificates issued by the continuing education provider, transcripts with course descriptions or other verified documentation of course completion.

(4) Licensees must retain proof of completion of continuing education during the next renewal period.

(5) The audit may include five percent of each license category during each renewal period.

(6) Failure to respond to a board notice of audit may result in disciplinary action against the licensee.

AUTH: 37-1-131, 37-1-319, 37-8-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

NEW RULE VII PLACEMENT OF AN OUT-OF-STATE NURSING STUDENT IN A MONTANA CLINICAL PRACTICE SETTING (1) The Montana board shall approve the placement of a student enrolled in an out-of-state nursing education program to undertake clinical practice in a Montana facility.

(2) The request for placement of an out-of-state student in a Montana clinical practice setting must be submitted to the board in writing, a minimum of two months prior to the proposed placement. The request must be signed by the director of the out-of-state nursing education program. The request for a clinical placement in Montana must include:

(a) documentation of out-of-state nursing education program's unconditional board approval and accreditation by CCNE or NLNAC;

(b) name, address, and contact information of the student seeking placement in a Montana clinical practice setting;

- (c) name and location of clinical practice setting where the out-of-state nursing education program seeks to place the student;
 - (d) name and contact information of the person employed at the Montana clinical practice setting who will serve as the primary liaison between the out-of-state nursing education program, the Montana board, and the Montana clinical facility;
 - (e) names, contact information, and educational credentials for Montana clinical preceptor(s) and out-of-state faculty member(s) who will participate in the student's clinical experience in Montana;
 - (f) detailed description of the preceptorship, including the specific practice area that will be the focus for the out-of-state student's clinical experience;
 - (g) explicit plan for out-of-state faculty supervision of the preceptor and out-of-state student in the Montana clinical practice setting;
 - (h) verification from relevant directors of Montana nursing education programs that placement of the out-of-state student in the identified Montana clinical practice setting, will not displace a Montana nursing student;
 - (i) verification from the Montana clinical practice setting of the facility's ability to accommodate the out-of-state student, without displacing a clinical student from any Montana nursing education program; and
 - (j) copy of the written agreement between the out-of-state nursing education program and the facility where the Montana clinical practice setting is located, which identifies preceptor(s), primary liaison, and out-of-state clinical faculty. The agreement must specify the responsibilities and delineate the functions of each entity in ensuring a quality educational experience for the out-of-state student.
- (3) The clinical preceptors, working with the out-of-state nursing faculty and the student in the Montana clinical practice setting, must meet the qualifications outlined by ARM 24.159.655 and 24.159.665. The preceptor is responsible for ensuring that the out-of-state student complies with all Montana laws and rules related to nursing.
- (4) Out-of-state faculty member(s) are responsible for ensuring safe, accessible, and appropriate preceptor supervision of the out-of-state student's Montana clinical practice experience. Out-of-state faculty member(s) must hold an unencumbered active nursing license and meet the requirements of ARM 24.159.662 for practical nursing faculty or ARM 24.159.659 for registered nursing faculty, with the single exception of Montana nursing licensure.
- (5) Montana board staff may conduct a site visit at the proposed clinical practice setting, either before or during the out-of-state student placement, upon 48-hour notice to the involved parties.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule VII to allow the board to consider and approve, on a case-by-case basis, the placement of out-of-state nursing students in a Montana clinical setting. Currently, out-of-state nursing students seeking a Montana clinical setting are denied because the out-of-state nursing education program has not been approved by the board. This new rule will allow the board to consider applications for clinical placements on a case-by-

case basis and approve them at the board's discretion, while having specific enough requirements in place to help protect the integrity of the approved clinical experiences.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., October 8, 2010.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.nurse.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2305, e-mailed to nurse@mt.gov, or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF NURSING
KATHY HAYDEN, LPN

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 30, 2010

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) AMENDED NOTICE AND
RULES I through XIII, pertaining to) EXTENSION OF COMMENT
approved construction techniques for) PERIOD ON PROPOSED
fire mitigation) ADOPTION

TO: All Concerned Persons

1. On April 29, 2010, the Department of Labor and Industry (department) published MAR notice no. 24-320-245 regarding the public hearing on the proposed adoption of the above-stated rules, at page 980 of the 2010 Montana Administrative Register, issue no. 8.

2. On May 24, 2010, a public hearing was held on the proposed adoption of the above-stated rules in Helena. Several comments were received by the previous June 1, 2010, deadline.

3. The department is extending the comment period because it has revised the statement of reasonable necessity for the proposed adoption of MAR notice no. 24-320-245. Sections 2-4-305(8)(b) and (c), MCA, require that an agency must use an amended proposal notice to correct any deficiencies in a statement of reasonable necessity, except for clerical corrections.

4. The statement of reasonable necessity is being amended as follows, new matter underlined, deleted matter interlined:

GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Montana Legislature enacted Chapter 443, Laws of 2007 (Senate Bill 51), an act revising growth policy and subdivision laws and requiring subdivision regulations to identify areas unsuitable for development. The bill was signed by the Governor and became effective on May 8, 2007. The department determined it is reasonable and necessary to adopt New Rules I through XIII to implement the legislation which requires the department to identify appropriate construction techniques for mitigation of fire hazards.

As required by 76-3-501, MCA, the governing bodies of every county, city, and town must adopt and provide enforcement of subdivision regulations. In turn, 76-3-504, MCA, requires such local subdivision regulations to provide for the identification of areas that are unsuitable for subdivision development because of natural or human-caused hazards. The regulations must prohibit subdivision in these areas, unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures, including those identified by the department under the direction of Title 50, chapter 60, part 9, Fire Mitigation Construction Techniques. The proposed rules were developed after a series of public meetings conducted by the department across the state and included various governmental officials and representatives of the private sector.

As restated in the body of the proposed new rules for emphasis, the proposed New Rules implement the 2007 legislation, which requires the department to merely identify appropriate construction techniques, from which local government officials may select and enforce individually or in combination, to mitigate identified fire hazards. The rules should be considered best practices and stated construction techniques are not part of the state building code and are not enforceable by the department's Building Codes Bureau.

5. Concerned persons may submit their data, views, or arguments either orally or in writing. Written data, views, or arguments may be submitted to the Department of Labor and Industry, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dcook@mt.gov, and must be received no later than 5:00 p.m., October 8, 2010.

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State August 30, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through IV relating to) PROPOSED ADOPTION
telecommunication services for)
corporation license taxes)

TO: All Concerned Persons

1. On October 6, 2010, at 1:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., October 1, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS The following definitions apply to this chapter:

(1) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service, typically marketed as toll-free calling, may utilize a prefix such as "800", "855", "866", "877", and "888" toll-free calling, or any subsequent numbers designated by the Federal Communications Commission.

(2) "900 service" means an inbound toll telecommunications service purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. 900 service does not include collection services provided by the seller of the telecommunications services to the subscriber, or service or product sold by the subscriber to the subscriber's customer. The service is typically marketed under the name 900 service, and any subsequent numbers designated by the Federal Communications Commission.

(3) "Air-to-ground radio telephone service" means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(4) "Ancillary service" is a type of telecommunications service that includes but is not limited to the following subcategories: "related services" as defined in 15-

53-129, MCA and ARM 42.31.501; "detailed telecommunications billing"; "directory assistance"; "vertical service"; "conference bridging service"; "digital downloads"; "ringtones"; and "voice mail services". The term ancillary service is defined as a broad range of services and is broader than the sum of the subcategories.

(5) "Bundled transaction" means the retail sale of two or more products.

(a) Bundled transaction includes retail sales in which the products are:

(i) otherwise distinct and identifiable; and

(ii) sold for one nonitemized price.

(b) For purposes of this rule, a bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(c) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

(i) the retail sale of two products where the first product is essential to the use of the second product, and the first product is provided exclusively in connection with the second, and the true object of the transaction is the second;

(ii) the retail sale of more than one product, but the products are sourced the same under this rule; or

(iii) the retail sale of more than one product, but the sum of the purchase price or sales price of products which are sourced differently under this rule is de minimis.

(6) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(7) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(8) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(9) "Conference bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include the telecommunications services used to reach the conference bridge.

(10) "Customer" means the person or entity which contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. Customer does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(11) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(12) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(13) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(14) "End user" means the person who utilizes telecommunications service. In the case of an entity, end user means the individual who utilizes the service on behalf of the entity.

(15) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(16) "Home service provider" has the same meaning as provided for in Section 124(5) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(17) "International" means a telecommunications service that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.

(18) "Interstate" means a telecommunications service that originates in one state of the United States, the District of Columbia, or a United States territory or possession, and terminates in a different state of the United States, the District of Columbia, or a United States territory or possession.

(19) "Intrastate" means a telecommunications service that originates in one state of the United States, the District of Columbia, or a United States territory or possession, and terminates in the same state of the United States, the District of Columbia, or a United States territory or possession.

(20) "Mobile telecommunications service" has the same meaning as provided for in Section 124(7) of Public Law 106-252 (Mobile Telecommunications Sourcing Act).

(21) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed. By way of example only, telecommunications services that are provided by a commercial mobile radio service provider would represent a mobile wireless service.

(22) "Network access service" means the provision by a local exchange telecommunications service provider of the use of its local exchange network by an inter-exchange telecommunications service provider to originate or terminate the inter-exchange telecommunications service provider's traffic carried to or from a distant exchange.

(23) "Outer jurisdictional property" means tangible personal property, such as orbiting satellites, undersea transmission cables and the like, that are owned or rented by the taxpayer and used in a telecommunications service business, but that are not physically located in any particular state.

(24) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.

(25) "Pay telephone service" means a telecommunications service provided through any pay telephone.

(26) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which shall be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, place of primary use shall be within the licensed service area of the home service provider.

(27) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service.

(28) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(29) "Prepaid wireless calling service" means the sale of a telecommunications service that provides the right to utilize mobile wireless service that is sold in predetermined units of dollars of which the number declines with use in a known amount.

(30) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(31) "Product" means tangible personal property, digital good, or service.

(32) "Service address" means:

(a) The location of the customer's telecommunications equipment, to which the customer's call is charged, and from which the call originates or terminates, regardless of where the call is billed or paid.

(b) If the location in (a) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) If the location in (a) and (b) are not known, the service address means the location of the customer's place of primary use.

(33) "Telecommunications service" means the two-way transmission of voice, image, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities, that originates or terminates in this state.

(a) The term telecommunications service is defined as a broad range of services. The term includes, but is broader than the sum of, the following subcategories: ancillary services as defined in this chapter, related services as defined in 15-53-129(10)(c), MCA and ARM 42.31.501, 800 service, 900 service, fixed wireless service, mobile wireless service, paging service, prepaid calling service, prepaid wireless calling service, private communication service, value-added non-voice data service, coin-operated telephone service, international telecommunications service, interstate telecommunications service, intrastate telecommunications service, network access service, and pay telephone service.

(b) The term telecommunications service does not include:

(i) data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic

transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data;

(ii) installation or maintenance of wiring or equipment on a customer's premises;

(iii) tangible personal property;

(iv) advertising, including but not limited to directory advertising; and

(v) billing and collection services provided to third parties.

(c) Examples of included and excluded services are:

(i) Example 1 - An entity provides dedicated network service to an entity which will resell that service as intrastate telecommunications service. Both entities are providing a telecommunications service.

(ii) Example 2 - An entity provides an interstate telecommunications service to an internet service provider which will use that service in the provision of internet access service. The entity providing interstate telecommunications service is providing a telecommunications service. The providing of internet access service is not the providing of a telecommunications service.

(iii) Example 3 - An entity primarily engaged in the provision of cable television provides an interstate telecommunications service. The entity is engaged in the provision of telecommunications services.

(34) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(35) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference bridging services.

(36) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages.

AUTH: 15-1-201, 15-31-313, 15-31-201, MCA

IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to define terms used in the rules contained in this subchapter consistent with how those terms are defined by the Multistate Tax Commission. Specifically the rule provides a standard definition of various telecommunication services. The rule supplies definitions of terms that are key in allocating and apportioning income of telecommunication companies for corporate license tax in Montana.

NEW RULE II GENERAL RULE (1) Except as specifically modified by the rules in this subchapter, when a person providing telecommunications services generates business income from sources within and outside of Montana, the amount of such business income arising from sources within Montana shall be determined pursuant to Title 15, chapter 31, part 3, MCA, and the supporting administrative rules.

AUTH: 15-1-201, 15-31-313, 15-31-201, MCA

IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to conform to those rules adopted by the Multistate Tax Commission. In addition New Rule II informs the reader that the department is electing to implement 15-31-312, MCA, which is the statute that allows for an alternative to the common apportionment formula for companies providing telecommunications services. This election is due to the fact that the common formula does not fairly represent the extent of these business activities in the state.

NEW RULE III PROPERTY FACTOR (1) Outer jurisdictional property that is used by a taxpayer when providing telecommunications services shall be excluded from both the numerator and the denominator of the property factor.

AUTH: 15-1-201, 15-31-313, 15-31-201, MCA

IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III to conform to those rules adopted by the Multistate Tax Commission. Specifically the rule establishes how to report outer jurisdictional property for Montana tax purposes.

NEW RULE IV SALES FACTOR (1) Gross receipts from the sale of telecommunications services, other than those defined in (3) through (7), which are sold on a call-by-call basis are in this state when:

(a) the call originates and terminates in this state; or
(b) the call either originates or terminates and the service address is also located in this state.

(2) Gross receipts from the sale of telecommunications services, other than those defined in (3) through (7), which are sold on other than a call-by-call basis, are in this state when the customer's place of primary use is in this state.

(3) Gross receipts from the sale of mobile telecommunications services, other than air-to-ground radiotelephone service and prepaid calling service, are in this state when the customer's place of primary use is in this state pursuant to the Mobile Telecommunications Sourcing Act.

(4) Gross receipts from the sale of prepaid calling service, prepaid wireless calling service and postpaid calling service are in this state when the origination point of the telecommunications signal is first identified in this state by either:

(a) the seller's telecommunications system; or
(b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(5) Gross receipts from the sale of a private communication service are in this state:

(a) if such service is for a separate charge related to a customer channel termination point, when the customer channel termination point is located in this state;

(b) if under such service all customer termination points are located entirely within one state, when the customer channel termination points are located in this state;

(c) if such service is for segments of a channel between two customer channel termination points located in different states and such segments of channel are separately charged, when one of the customer channel termination points is in this state, provided however that only fifty percent of such gross receipts shall be sourced to this state; and

(d) if such service is for segments of a channel located in more than one state and such segments are not separately billed, when the customer channel termination points are in this state, provided however that only a percentage of such gross receipts, determined by dividing the number of customer channel termination points in the state by the total number of customer channel termination points, are in this state.

(6) A portion of the total gross receipts from sales of telecommunications services to other telecommunications service providers for resale is in this state in an amount determined by multiplying such total gross receipts by a fraction, the numerator of which is total carrier's carrier service revenues for this state and the denominator of which is the sum of total carrier's carrier service revenues for all states in which the taxpayer is doing business, as reported by the Federal Communications Commission in its report titled Telecommunications Revenues by State, Table 15.6, or successor reports which include such information, for the most recent year available as of the due date of the return, determined without regard to extensions.

(7) Gross receipts attributable to the sale of telecommunications services sold as part of a bundled transaction are in this state when such gross receipts would be in this state in accordance with the provisions of (1) through (6).

(a) The amount of gross receipts attributable to the sale of a telecommunications service which is sold as part of a bundled transaction shall be equal to the price charged by the taxpayer for such service when sold separately, adjusted by an amount equal to the quotient of the difference between:

(i) the price charged by the taxpayer for the bundled transaction;

(ii) the sum of the prices charged by the taxpayer for each of the included products when sold separately; and

(iii) the number of products included in the bundled transaction.

(b) If the amount of such gross receipts is not determinable under (a), then it may be determined by reasonable and verifiable standards from taxpayer's books and records that are kept in the regular course of business for purposes including, but not limited to, nontax purposes.

(8) Gross receipts from the sale of telecommunications services which are not taxable in the state to which they would be apportioned pursuant to (1) through (6), shall be excluded from the denominator of the sales factor.

AUTH: 15-1-201, 15-31-201, 15-31-313, , MCA

IMP: 15-1-601, 15-31-301, 15-31-302, 15-31-303, 15-31-304, 15-31-305, 15-31-306, 15-31-307, 15-31-308, 15-31-309, 15-31-310, 15-31-311, 15-31-312, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule IV because the current greater cost of performance method for apportionment of business income does not fairly represent the extent of the telecommunication industry business in the state. The cost of performance does not recognize the contribution of sales made to and paid by Montanans. Section 15-31-312(4), MCA states the tax administrator may require an alternative method to produce an equitable allocation and apportionment of the taxpayer's income. These proposed rules would employ a method of apportionment of telecommunication industry income to fairly represent the extent of telecommunication business activity in Montana and equitably apportion that income to Montana for tax purposes.

The department has historically adopted industry-specific rules to implement 15-31-312, MCA, including rules for income earned by freight and passenger carriers, railroads, trucking companies, airlines, construction companies, publishing, and television and radio broadcasting. This proposed rule is based primarily on a Multistate Tax Commission recommendation concerning the apportionment of income from the sale of telecommunications and ancillary services. Differences with that recommendation are limited to changes necessary to conform to specific provisions in Montana law, including definitions of telecommunications services and related or ancillary services.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than October 15, 2010.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which

includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State August 30, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I) NOTICE OF PUBLIC
and amendment of ARM 42.22.101,) HEARING ON PROPOSED
42.22.105, and 42.22.110 relating to) ADOPTION AND
centrally assessed property) AMENDMENT

TO: All Concerned Persons

1. On October 6, 2010, at 3:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., October 1, 2010, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

The following rules are proposed to provide direction to the industry on a number of issues that have become litigated in the recent past. The intent of these rules is to lessen the amount of this litigation.

The rules will maintain a constant and consistent amount of property tax revenue for the citizens of this state. The rules will affect centrally assessed companies.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I ADOPTION OF APPRAISAL METHODS AND APPRAISAL STANDARDS (1) The department adopts the 2009 WSATA-CCAP (Western States Association of Tax Administrators - Committee on Centrally Assessed Properties) appraisal handbook, published in August 2009, available at www.WSATA.org, user name WSATA, password member, as the reference and overall appraisal guide for conducting unit valuations of centrally assessed properties in Montana.

(2) The department adopts the NCUVS (National Conference of Unit Valuation States) standards, published in October 2005, available at www.NCUVS.org, link to "standards", as standards when conducting unit valuations of centrally assessed properties.

AUTH: 15-1-201, MCA

IMP: 15-8-101, 15-8-111, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I because the department utilizes the WSATA handbook and NCUVS standards when appraising properties in Montana. The WSATA handbook is used to provide a consistent and equitable approach to conducting unit valuations and appraising centrally assessed property. The WSATA handbook is an accumulation of years of expert discussion and research to find and identify the best methods to appraise this type of property in a fair and accurate manner.

In addition, the adoption of the NCUVS standards promotes consistent appraisal methods and techniques of unit valuation among all states.

4. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

42.22.101 DEFINITIONS The following definitions apply to this chapter:

(1) through (9) remain the same.

(10) "Goodwill" means booked or accounting goodwill. The booked goodwill must be present on the subject properties' financial statements, and must have been created through the purchase price accounting process as defined by GAAP or other accounting authority.

(10) remains the same but is renumbered (11).

(12) "Intangible personal property" has the following attributes:

(a) Intangible personal property must be separable from the other assets in the unit and capable of being held under separate title or ownership.

(b) Intangible personal property must be able to be bought and sold, separate from the unit of operating assets, without causing harm, destroying, or otherwise impairing the value of the unit of assets being valued through the appraisal process.

(c) Intangible personal property must have value as a result of its ability to create earnings that exceeds their contributory value to the unit; or, it must be capable of earning an income as a standalone entity or apart from the other assets of the unit.

(d) Intangible personal property is not the same as intangible value. Intangible value is the value of an entity as a going concern - its ability to make excess revenues over the normal rate of return. Intangible value is part of the overall value of assets. Intangible value is not exempt from property taxation in Montana.

(11) through (32) remain the same but are renumbered (13) through (34).

AUTH: 15-23-108, 15-53-155, 15-72-117, MCA

IMP: 15-6-156, 15-23-101, 15-23-104, 15-23-211, 15-23-213, 15-53-145, 15-53-147, 15-72-104, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.101 to add the definition of "goodwill" and "intangible personal property", both key in instructing the taxpayer on what is included in the taxable value and what is

not. The department has had numerous requests from taxpayers and taxpayer organizations to provide clarity in this area. These definitions constitute the practice of the department in valuing centrally assessed properties and provide the requested clarity that taxpayers and taxpayer organizations have asked for.

42.22.105 REPORTING REQUIREMENTS (1) Each year all centrally assessed companies shall submit to the department a report of operations, called the centrally assessed annual reporting form, for the preceding year. Railroads, railroad car companies, and pipelines shall submit the report by April 15 and all others by March 31, on forms supplied by the department.

(2) If a centrally assessed company fails to file a report with the department the company will be subject to the penalties listed in 15-23-104, MCA. Submission of an annual business property reporting form to a local department county office does not relieve the company of its requirement to file the centrally assessed annual reporting form to the centrally assessed unit located in Helena. In addition, if the department determines that a company is a centrally assessed company, that company must cease to file the annual business property reporting form to the department's local county office.

(a) Based on the appropriate statutory authority, the department shall determine if a company meets the requirements to be centrally assessed. If a company believes that the department has improperly determined that the company is centrally assessed, the company must still file the required centrally assessed annual reporting form, and if desired, appeal the department's centrally assessed determination to the appropriate venue.

(2)(3) The report shall contain the following information on the operating properties:

- (a) balance sheet for the system;
- (b) statement of income for the system;
- (c) original cost and book depreciation for system property, including an estimate of current value of property leased from others;
- (d) statement of outstanding preferred stock, common stock, and debt, showing both book value and market value;
- (e) statement of actual revenue and expense for the Montana operation (if actual amounts are not available, a statement of allocated revenue and expense may be substituted);
- (f) if nonoperating properties are included in ~~(2)(3)~~(a) through (e), their original cost, book depreciation, market value, and income;
- (g) general description, original cost, and book depreciation of Montana properties, including description and location of property leased from others, together with name of lessor, current value or annual rental, and responsibility for the property tax (lessor or lessee);
- (h) if rolling stock is allocated to Montana, the method used;
- (i) pertinent statistical data on the company's operations within and without this state;
- (j) copy of annual report to stockholders;
- (k) copy of annual report to the federal regulatory agency if one is filed;
- (l) copy of annual report to the Montana Public Service Commission if one is

filed;

(m) in the case of centrally assessed railroads, all information required under ARM 42.22.106;

(n) in the case of centrally assessed electric utilities, all information required under ARM 42.22.107, if applicable;

(o) all other information requested by the department which will assist in valuing the properties; and

(p) signed statement of correctness.

(3) remains the same but is renumbered (4).

AUTH: 15-6-218, 15-23-108, MCA

IMP: 15-6-218, 15-23-103, 15-23-201, 15-23-212, 15-23-301, 15-23-402, 15-23-502, 15-23-602, 15-23-701, MCA

REASONABLE NECESSITY: This department is proposing to amend ARM 42.22.105 to direct the taxpayer on how to file their Department of Revenue annual reports locally or with the Helena office. For the most part the rule states that if the department classifies the taxpayer's property as centrally assessed property, the taxpayer must file the report with the central Helena office. If the taxpayer's property is not classified as centrally assessed property, then the taxpayer must file the annual report with the local Department of Revenue office. The rule reflects the fact that the department is the authority that classifies centrally assessed property, not the taxpayer.

42.22.110 DEDUCTIONS FOR INTANGIBLE PERSONAL PROPERTY

(1) Cost, income, and market indicators of the unit value of centrally assessed properties can generally be expected to include the value of real property, the value of personal property, and in some cases the value of specific intangible personal property. To the extent that each unit valuation indicator includes the value of intangible personal property it shall not be relied upon unless such value of the intangible personal property is excluded or removed.

(2) The department recognizes that the following percentages may not necessarily provide a taxpayer-specific measurement of intangible personal property. However, accurately quantifying the value of intangible personal property is difficult and subject to controversy and litigation which would not clarify the issues for future appraisals. The percentages are a good faith effort to comply with the rulemaking requirements of 15-6-218, MCA, in a manner that is timely and efficient for both the taxpayers and the department.

(a) Subject to the provisions of ~~(2)~~(3), intangible personal property shall be removed from the cost indicator by using the following percentages:

- | | |
|-----------------------------|-----|
| (i) Airlines | 10% |
| (ii) Pipelines | 5% |
| (iii) Electric cooperatives | 5% |
| (iv) Telephone cooperatives | 5% |
| (v) Electric utilities | 10% |
| (vi) Telecommunications | 15% |

(b) Subject to the provisions of ~~(2)~~(3), intangible personal property shall be

removed from the income indicator by using the following percentages:

- (i) Airlines 10%
- (ii) Pipelines 5%
- (iii) Electric cooperatives 5%
- (iv) Telephone cooperatives 5%
- (v) Electric utilities 10%
- (vi) Telecommunications 15%

(c) Subject to the provisions of ~~(2)~~(3), intangible personal property shall be removed from the market indicator by using the following percentages:

- (i) Airlines 10%
- (ii) Pipelines 5%
- (iii) Electric cooperatives 5%
- (iv) Telephone cooperatives 5%
- (v) Electric utilities 10%
- (vi) Telecommunications 15%

(d) For railroads assessed according to the provisions of 15-23-205, MCA, exempt intangible personal property, which shall be deducted from the railroad system value, is equal to 5% of the system value. If a railroad is not assessed pursuant to 15-23-205, MCA, but assessed using cost, income and market indicators to value, 5% of the value determined by each indicator shall be removed to reflect the value of intangible personal property in each indicator subject to the provisions of (3).

~~(2)~~(3) If any taxpayer believes that the value of its intangible personal property is greater than that allowed under ~~(1)~~(2), the taxpayer may propose alternative methodology or information at any time during the appraisal process and the department will give it full and fair consideration. If the department concludes that the value of intangible personal property is greater than that allowed in ~~(1)~~(2), the unit value will be decreased accordingly. In no event, however, will the value of intangible personal property be less than that allowed in ~~(1)~~(2).

~~(3) The department and taxpayers will participate in the review of the percentages in (1)(a), (b) or (c), biennially starting in the year 2000.~~

(4) In order for intangible personal property to be considered for a deduction higher than the default percentage prescribed in (2), the property must have the characteristics of personal property as defined above.

(5) A taxpayer may, at any time, make recommendations to the department, regarding the percentages in (2)(a), (b), or (c).

AUTH: 15-23-108, MCA

IMP: 15-6-218, 15-23-202, 15-23-303, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.22.110 to address potential deductions of intangible personal property from the property tax value. The rule reflects the practice of the department. The rule is being amended to provide taxpayers and the department guidance in situations where the railroad valuation formula established in 15-23-205, MCA is not used to determine market value for a railroad.

The amendments to the rule will allow the taxpayer to make

recommendations anytime regarding the default percentages and not have to wait for a scheduled annual meeting.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than October 15, 2010.

6. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 5 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Alan G. Peura
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State August 30, 2010

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 44.12.204 pertaining to the)	AMENDMENT
payment threshold--inflation)	
adjustment for lobbyists)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On October 9, 2010, the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Political Practices no later than 5:00 p.m. on September 24, 2010, to advise us of the nature of the accommodation that you need. Please contact Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail dunsworth@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2007~~ 2009 and ~~2008~~ 2010 is ~~\$2,300~~ 2,400.

AUTH: 5-7-111, MCA
IMP: 5-7-112, MCA

Reasonable Necessity: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Dennis Unsworth, Commissioner of Political Practices, P.O. Box 202401, 1205 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail dunsworth@mt.gov, and must be received no later than 5:00 p.m., October 7, 2010.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Dennis Unsworth at the above address no later than 5:00 p.m., October 7, 2010.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 50 persons based on the 500 lobbyists who registered to lobby in 2007-2008.

7. The commissioner maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this Proposal Notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer
Assistant Attorney General

/s/ Dennis Unsworth
Dennis Unsworth
Commissioner

Certified to the Secretary of State August 30, 2010.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 4.5.210 relating to priority 3)
regulated plants)

TO: All Concerned Persons

1. On July 15, 2010 the Department of Agriculture published MAR Notice No. 4-14-196 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1588 of the 2010 Montana Administrative Register, Issue Number 13.

2. The department received 44 comments supporting listing Russian olive trees as a regulated plant, 14 comments opposing the listing of Russian olive trees as a regulated plant, and 1 informational comment.

3. The department received the following comments (comments 1-10 are from those who oppose the rule, comments 11-19 are from those who support the rule):

COMMENT #1: Russian olive trees should be banned or made a full noxious weed (3 commenters).

RESPONSE #1: The invasive properties of this plant substantiate this sentiment. Currently, regulation to prohibit intentional sale and spread of the plant is the most practical course of action.

COMMENT #2: Russian olive trees are destroying the river and lake vegetation in the state which is harmful to the native wildlife as well (33 commenters).

RESPONSE #2: The same characteristics that allow Russian olive to survive in harsh environments, also give it some competitive advantage on more mesic sites; most notably in Montana riparian ecosystems. When plant diversity is reduced in an area, all corresponding life is negatively impacted. Russian olive enhances habitat for some wildlife species, but it replaces native vegetation and reduces habitat for many other wildlife species. It is rarely eaten or used by beavers, thus furthering its competitive advantage over cottonwood and willow.

COMMENT # 3: It does not make sense to spend time and money both planting the tree in one area of the state while destroying it in another (19 commenters).

RESPONSE #3: It is this practicality that drives the state placement of Russian olive into Priority 3 and prohibits the sale and intentional spread of new plants, while control of the existing plants is left to the discretion of land managers.

COMMENT #4: Dual listing would cause problems (1 commenter).

RESPONSE #4: Due to the current structure of the weed list, Russian olive is best suited to Priority 3; the regulatory aspect of this provides authorization to halt sale into or in the state of Montana.

COMMENT #5: The costs to private landowners to control Russian olive trees are starting to increase (8 commenters).

RESPONSE #5: Although slow to mature, this introduced species is very aggressive in riparian areas once it produces viable seed. Control of a riparian invasive species is very cost prohibitive.

COMMENT #6: Other western states now list Russian olive as a noxious weed (1 commenter).

RESPONSE #6: Several other states in the region do list Russian olive as a noxious weed, and they have struggled with the same conflict between windbreak proponents and riparian area opponents. Responding to the detrimental effects on the economy and environment, federal funding is available to states working on the control of Russian olive and Saltcedar in riparian settings.

COMMENT #7: Russian olive trees interfere with honey bees (1 commenter).

RESPONSE #7: We do not have data to support this nor was it a basis for the proposed rule amendment.

COMMENT #8: Some people have severe allergies to Russian olive tree pollen (1 commenter).

RESPONSE #8: This is a valid concern; human health issues are one of the criteria examined in the listing process. Nonetheless, we do not have data to support this nor was it a basis for the proposed rule amendment.

COMMENT # 9: Russian olive is the only tree that will grow in Eastern Montana (10 commenters).

RESPONSE #9: Climate and geography determine what can grow in eastern Montana. Russian olive is an introduced species from a similar environment. There are several native species and sterile hybrids that have been considered as viable substitutions.

COMMENT #10: The state should support any tree that will grow in Eastern Montana (5 commenters).

RESPONSE #10: The state has an obligation to protect the multiple environments that exist in our borders. The wellbeing of riparian areas should not be compromised in order to promote a nonnative plant in an environment that does not support trees due to natural climatic and geographic limitations.

COMMENT #11: What other trees could even grow in dry parts of Montana (4 commenters)?

RESPONSE #11: Due to the climate and geography of eastern Montana, few if any, tree species grew there before Russian olive was introduced. Several native and noninvasive introduced brush and tree species are highlighted for consideration as revegetation species when Russian olives are replaced, or when developing new windbreaks. Examples of dry area plants that might be substituted are Rocky mountain juniper, dogwood, Silver buffaloberry, etc.

COMMENT # 12: Why not restrict only elevations under 4000 feet (1 commenter)?

RESPONSE #12: The Montana noxious weed list encompasses the whole state, and areas over 4000 feet likely can't grow the tree.

COMMENT #13: Russian olive trees prevent soil erosion and are an excellent wind break (6 commenters who oppose the rule, it was mentioned by 4 commenters who support the rule as well).

RESPONSE #13: Yes. Nonetheless, negative impacts of the Russian olive in other environments must be taken into the balance when making a statewide determination.

COMMENT #14: The amount Russian olive trees interfere with cottonwoods (and other trees) is debatable (2 commenters).

RESPONSE #14: Slow maturation and limits on the rate of seed dispersal lend to the perception that Russian olive is not invasive, but it is well documented that Russian olive can and does displace native trees such as cottonwood, green ash, and various willows along Montana river systems. Russian olive enhances habitat for some wildlife species, but it replaces native vegetation and reduces habitat for many other wildlife species. It is rarely eaten or used by beavers, thus furthering its competitive advantage over cottonwood and willow.

COMMENT # 15: Tree management (especially tree trimming) could eliminate most of the problems associated with Russian olive trees (1 commenter).

RESPONSE #15: Statewide application of tree trimming and similar management actions is cost prohibitive. Given a windbreak on one ranch, it might be feasible, but when considering entire watersheds with multiple landowners it is impractical.

COMMENT #16: Instead of making it a statewide designation, make it a county by county decision or only ban it near riparian areas (sometimes referred to as dual listing) (4 commenters who oppose, and 1 who supports).

RESPONSE #16: Currently, the Montana Weed Act and Administrative Rules provide latitude for county level prioritization of noxious weeds. Our intent is to prohibit any future sale into and around Montana, the act already provides the individual counties authorization to manage noxious weeds as is appropriate.

COMMENT #17: It will cost too much to cut down the Russian olive trees if they are made a noxious weed (1 commenter).

RESPONSE #17: Eradication of Russian olive from the state is not presumed. Our intent is to prohibit any future sale into and around Montana, and provide state funding to augment local control efforts where warranted. Noxious weed management is multifaceted; the individual situation directs the goal of eradication or more commonly, containment and control.

COMMENT # 18: Russian olive trees are beneficial to birds especially pheasants and grouse (6 commenters who oppose the rule, it was mentioned by 4 commenters who support the rule as well).

RESPONSE #18: A happy side effect of Russian olive windbreaks in the drier environments of Montana where previously no shrubs or trees of significance grew, is the creation of habitat for animals that were either nonexistent, or there in smaller numbers. Unfortunately, that is not the case in many environments—particularly the riparian areas. Russian olive has crowded out native trees and shrubs that typically flourish with a variety of species. Russian olive results in a monoculture; this results in a lack of biodiversity in animals as well as plants. Most birds adapt if the environmental change is gradual enough, and they can meet a portion of the food, shelter, and water they require, but varieties as well as populations are generally reduced.

4. In addition to the traditional comments, the department sought comment directly from the county commissioners of all Montana counties. Six counties opposed the proposed rule, 25 counties supported the rule, and 25 counties failed to respond.

5. The department's proposed amendment is unchanged after having reviewed all of the comments.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State August 30, 2010.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT
ARM 10.7.106A, 10.10.301,)	
10.10.301B, 10.10.301D, 10.10.320,)	
10.10.611, 10.10.613, 10.15.101,)	
10.20.102, 10.20.106, 10.21.101C,)	
and 10.30.405 pertaining to school)	
finance)	

TO: All Concerned Persons

1. On July 29, 2010, the Superintendent of Public Instruction published MAR Notice No. 10-7-120 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1635 of the 2010 Montana Administrative Register, Issue Number 14.
2. The Superintendent of Public Instruction has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Ann Gilkey
 Ann Gilkey
 Rule Reviewer

/s/ Denise Juneau
 Denise Juneau
 Superintendent of Public Instruction

Certified to the Secretary of State August 30, 2010.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
18.12.401 and 18.12.501 pertaining)
to aeronautics division)

TO: All Concerned Persons

1. On July 29, 2010 the Department of Transportation published MAR Notice No. 18-128 pertaining to the proposed repeal of the above-stated rules at page 1650 of the 2010 Montana Administrative Register, Issue Number 14.

2. The department has repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Jim Lynch
Jim Lynch,
Director
Department of Transportation

Certified to the Secretary of State August 30, 2010.

BEFORE THE BOARD OF HORSE RACING
DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of)
ARM 32.28.801 and 32.28.804)
pertaining to eligibility for maidens) NOTICE OF AMENDMENT
over seven years old and conditions)
accompanying a claim)

TO: All Concerned Persons

1. On July 15, 2010, the Department of Livestock published MAR Notice No. 32-10-212 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1594 of the 2010 Montana Administrative Register, Issue Number 13.

2. The department has amended the above-stated rules as proposed.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT 1: A comment was received that if a horse doesn't have to reestablish eligibility once claimed, then other horsemen don't have the same opportunity to claim the horse at that price before the horse is eligible for a starter allowance. It was stated that such an opportunity is the nature of the claiming game.

RESPONSE 1: Someone who purchases a horse outright is not required to reestablish eligibility for a starter allowance, and thus, does not provide an opportunity for other horsemen to claim the horse for the same amount. The amendment to the rule provides consistency between horses claimed and horses purchased outright in the eligibility rules of starter allowances.

COMMENT 2: Rule changes should occur at the start of the racing season so that it impacts all race meets equally.

RESPONSE 2: The proposed rule change was noticed and discussed at the June 8 and July 23 board meetings and published in the Montana Administrative Register as provided by law. There are no rules or statutes prohibiting rule changes midseason. Every effort will be made for rule changes to take affect prior to the first day of an individual race meet. With proper notice, however, the proposed rule changes should have no significant negative impacts on subsequent race dates.

DEPARTMENT OF LIVESTOCK

/s/ Sherry K. Meador
Sherry K. Meador, Rule Reviewer

/s/ Christian Mackay
Christian Mackay, Executive Officer
Department of Livestock

Certified to the Secretary of State August 30, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF DECISION
ARM 42.13.101 relating to the sale of)
alcohol to a minor and sale to)
intoxicated persons)

TO: All Concerned Persons

1. On March 25, 2010, the department published MAR Notice No. 42-2-825 regarding the proposed amendment of the above-stated rules at page 734 of the 2010 Montana Administrative Register, issue no. 6.

2. A public informational hearing was held on May 26, 2010, to receive views from the public on whether it should consider proposing amendments to ARM 42.13.101 relating to the sale of alcohol to minors and intoxicated persons. Oral and written testimony was received at and subsequent to the hearing.

The department is not taking any action at this time given the Legislature's consideration of issues related to alcohol consumption within the state.

The department appreciates the input from all the citizens regarding this important issue and will compile a report to be provided to the Law and Justice and the Revenue and Transportation Committees of the Montana Legislature.

3. An electronic copy of this notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State August 30, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.5.201, 42.5.202, and)
42.5.213 relating to electronic funds)
filing and remittance)

TO: All Concerned Persons

1. On July 29, 2010, the department published MAR Notice No. 42-2-838 regarding the proposed amendment of the above-stated rules at page 1717 of the 2010 Montana Administrative Register, issue no. 14.

2. A public hearing was held on August 18, 2010, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received.

3. The department amends ARM 42.5.201, 42.5.202, and 42.5.213 as proposed.

4. An electronic copy of this adoption notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this adoption notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State August 30, 2010

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2010. This table includes those rules adopted during the period April 1, 2010, through June 30, 2010, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2010, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2010 Montana Administrative Register.

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Editor's note: This interim committee letter of objection to rulemaking, agency response to letter of objection to rulemaking, and reprint of 2010 MAR notice no. 37-509 adoption notice, is being published pursuant to 2-4-406(3), MCA.



Children, Families, Health, and Human Services Interim Committee

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61st Montana Legislature

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July 6, 2010

Ms. Anna Whiting Sorrell, Director
Department of Public Health and Human Services
111 North Sanders, Room 301
Helena, MT 59620

Dear Director Whiting Sorrell:

Pursuant to the Children, Families, Health and Human Services Interim Committee's (CFHHS) statutory authority as the appropriate administrative rule review committee under 5-5-225, MCA, and the provisions of Title 2, chapter 4, parts 3 and 4, this letter constitutes notice to the Department of Public Health and Human Services that the members of the CFHHS Interim Committee have notified the committee's chair that they object to the adoption of rulemaking promulgated by MAR Notice 37-509 relating to resource based relative value scale (RBRVS) for physician reimbursement of services under Medicaid. Montana Medicaid uses the RBRVS rate system to calculate the fee Montana Medicaid pays to 20 types of health care professionals. The department annually proposes to amend ARM 37.85.212, in this case, via MAR Notice 37-509, to adopt current relative value units (RVUs). The fee paid for a procedure by a health plan is calculated by multiplying that procedure's RVU by the health plan's conversion factor. The conversion factor for licensed physicians is set by 53-6-124 through 53-6-127, MCA. Because of the general fund budget deficit, in MAR Notice 37-509, the department is proposing to set conversion factors and fees for Medicaid reimbursement for physicians for SFY 2011 at the SFY 2010 level.

Specifically, as discussed during the administrative rule review portion of their June 28, 2010 meeting, the CFHHS Interim Committee is objecting to the rule adoption notice for MAR Notice 37-509 for the following reason:

CFHHS disagrees with the department's authority to set the physician's reimbursement rate at SFY 2010 levels. In 2007, the Montana Legislature enacted 53-6-125, MCA, pertaining to physician's reimbursement rates and provides that for fiscal year 2011, the 2010 percentage of the conversion factor (and accordingly, physician rate increases) will be increased by a minimum of 6%. In the opinion of CFHHS, there is nothing in 17-7-140, MCA, giving the governor limited authority to reduce certain expenditures during a projected fund budget deficit, which explicitly or implicitly gives the executive branch the authority to change statutorily prescribed payments or duties. Such a practice would be seen as a violation of the separation of powers. Furthermore, the department's assertion that because physician provider rates are not listed in 17-

7-140(2), MCA, as being exempt from a reduction in spending, it is therefore allowable to make cuts to those statutorily mandated rates doesn't hold merit either. Only six exemptions are listed in 17-7-140(2). Using the department's reasoning, hundreds of state statutes should be specifically exempted in order to be free from reductions by the executive branch.

Legal staff for the CFHHS Interim Committee had asked the department to respond to these concerns precipitated by the proposal notice of MAR Notice 37-509 prior to adopting the rule. The department chose to respond in the rule adoption notice in which the department continued to state it had the authority to make the cuts to physician reimbursement rates under 17-7-140, MCA. Although the department has broad authority under 53-6-101(8) and 53-6-113 (3), MCA, to set Medicaid provider reimbursement rates generally, it cannot ignore or change other statutes. That is the role of the legislature.

Pursuant to the authority granted to CFHHS as the rulemaking review authority for DPHHS and pursuant to 2-4-406, MCA, the CFHHS Interim Committee is submitting this letter in written objection to the department's adoption of MAR Notice 37-509. Under 2-4-406, MCA, the CFHHS Interim Committee does not consider the rule adoption contained in MAR Notice 37-509 to have been done in substantial compliance with 2-4-305, MCA, which specifically states that rules may not be adopted when they are in conflict with statute, which is clearly the case here.

Pursuant to 2-4-406, MCA, the department is required to respond to this letter within 14 days. After receipt of the response, the committee may withdraw or modify its objection. Section 2-4-406, MCA, further states:

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt of the objection, publish the objection in the register adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response must be paid by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of the rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its burden of proof imposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency.

Furthermore, if an administrative rule is not implemented in accordance with the requirements of Title 2, chapter 4, parts 3 and 4 of the Montana Administrative Procedure Act, it is not considered to be effective. Such would be the case here as the department is attempting to adopt a rule in direct conflict with statute.

Thank you for your consideration of this matter.

Sincerely,

Rep. Diane Sands
CFHHS Chairperson

cc: Bernie Jacobs, DPHHS Chief Legal
Geraldyn Driscoll, DPHHS Legal staff
CFHHS Interim Committee
Montana Secretary of State Linda McCollough

DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES



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July 23, 2010

Representative Diane Sands
Children, Families, Health and Human Services Interim Committee
P.O. Box 201706
Helena, Mt 59620-1706

Re: DPHHS written response, pursuant to §2-4-406, MCA, to the Committee's July 9, 2010, objection to MAR 37-509 rule adoption notice

Dear Chairwoman Sands:

I am responding to your July 9, 2010, letter, which states that members of the Children, Families, Health and Human Services Interim Committee have notified you that they object to DPHHS' adoption of amendments to Administrative Rule of Montana (ARM) 37.85.212 -- Resource Based Relative Value Scale (RBRVS) Reimbursement for Specified Provider Types. For the reasons stated in this letter, I respectfully disagree with the committee members who conclude that ARM 37.85.212 conflicts with statute and request that the committee withdraw its objection.

ARM 37.85.212, which was adopted in 1997, describes the methodology the State of Montana uses to set the reimbursement rates paid to 20 types of health care professionals¹, including licensed physicians, for services provided to Medicaid recipients. Sections 53-6-124 through 127, MCA, pertaining to the RBRVS method, specifically require DPHHS to use the RBRVS methodology to set licensed physician's reimbursement rates and ARM 37.85.212 conforms to that requirement.

The amount of reimbursement paid to a provider is a function of both the methodology, and the amount of revenue appropriated to pay for services. DPHHS annually amends ARM 37.85.212 to state Montana Medicaid's RBRVS reimbursement rates for the next state fiscal year (SFY) based on the Legislature's appropriation for that fiscal year – the methodology remains constant but the rates change based on appropriations. Sections 53-6-124 through 127, MCA, state the rate methodology for physicians, which the Department uses, but do not appropriate funds for increasing licensed physician's Medicaid reimbursement rates.

The specific statute on DPHHS's authority to set rates is § 53-6-113 (3), MCA.

¹ Physicians, mid-level practitioners, podiatrists, physical therapists, occupational therapists, speech therapists, audiologists, optometrists, opticians, providers of clinic services, providers of EPSDT services, licensed psychologists, licensed clinical social workers, licensed professional counselors, dentists providing medical services, providers of oral surgery services, providers of pathology and laboratory services, independent diagnostic testing facilities, school based services, and QMB and EPSDT chiropractic services.

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The statute applicable to spending reductions is § 17-7-140, MCA. This statute specifically gives the Executive Branch the authority to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium when a general fund budget deficit exists.

Sections 53-6-124 through 127, MCA, pertaining to the RBRVS method, were enacted in 2007. Section 17-7-140, MCA pertaining to reductions in spending was enacted in 1991. Section 17-7-140 (2) provides specific guidance on what reductions in spending may not be directed by the Governor. The Department believes exempt increases for Medicaid fees paid to licensed physicians from the Governor's spending reduction authority would have to be specifically listed in § 17-7-140 (2) , MCA as an area of state spending that cannot be reduced.

Sections 53-6-124 through 127, MCA, apply to one topic and one provider group—Medicaid reimbursement rates for licensed physicians. These statutes are silent regarding spending reductions when there is a general fund deficit. The statutes specifically require Montana Medicaid to use the RBRVS rate setting methodology for licensed physicians, which DPHHS uses. These statutes, however, do not appropriate funds to be used exclusively to pay licensed physician's Medicaid reimbursement. They do not compel a rate increase for licensed physicians in SFY 2011 or require that Montana Medicaid give preference to the payment of licensed physician rate increase over all other programs and services administered by the Department.

To reduce spending in SFY 2011, DPHHS sets the SFY 2011 Medicaid rate for all RBRVS providers, including licensed physicians, at the SFY 2010 level. DPHHS is attempting to hold all providers' reimbursement rates at current levels. DPHHS was aware of and considered §§ 53-6-124 when it set rates at the SFY 2010 level. These statutes do not require Medicaid reimbursement rates to licensed physicians to increase regardless of the impact on all other programs funded by the State of Montana. As stated in the notice of proposed amendment:

The Department considered the alternative of increasing Medicaid fees paid to licensed physicians and decreasing other providers' fees more. This solution to the current revenue shortfall would have a greater adverse impact on more Medicaid providers and clients. The department is attempting to maintain fees at the 2010 level for all providers and avoid lopsided adverse impacts of the shortfall in the state's revenue.

I hope that the Interim Committee will consider §§ 53-6-124 through 127 in the context of a budget deficit and the requirement of § 17-7-140 and withdraw its objection to adoption of MAR 37-509 rule adoption notice.

Sincerely,

Mary E. Dalton
acting for

Anna Whiting Sorrell
Director

Med/Legislature/Rep Sands

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BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
37.85.212 pertaining to the resource)
based relative value scale (RBRVS))

TO: All Concerned Persons

1. On April 29, 2010, the Department of Public Health and Human Services published MAR Notice No. 37-509 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1030 of the 2010 Montana Administrative Register, Issue Number 8.

2. The department has amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS) REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) through (b)(ii) remain as proposed.

(iii) mental health services, which applies to the following health care professionals listed in (2): licensed psychologists, licensed clinical social workers, and licensed professional counselors. The conversion factor for mental health services for state fiscal year 2011 is ~~\$24.26~~ \$25.45; and

(iv) through (14) remain as proposed.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: MHA, an Association of Montana Health Care Providers, commented against maintaining physician rates in state fiscal year (SFY) 2011 at the SFY 2010 level. It asserts the 60th Montana Legislature, meeting in 2007, mandated future, annual increases in the rate Montana Medicaid pays physicians regardless of future sessions' appropriations or actual state revenue collected.

The MHA commented that ". . . the Medicaid program has severely underpaid physicians, which . . . discouraged physicians from taking additional Medicaid beneficiaries into their practices." As a result, MHA comments, Medicaid beneficiaries cannot access primary care; instead they access hospital emergency departments, which is the most expensive place to provide these services.

The MHA commented that the proper course of action is to debate this issue when the Legislature reconvenes but the department should implement a 6% Medicaid physician payment rate increase now.

COMMENT #2: The Billings Clinic commented against maintaining physician rates in SFY 2011 at the SFY 2010 level. Like the MHA, it also asserts legislation passed by the 2007 Legislature (Senate Bill 354 (SB 354) 2007 Laws of Montana, Chapter 505, codified at 53-6-124, 53-6,125, 53-6,126, and 53-6-127, MCA) intended a gradual increase in physician rates to equal those paid under commercial insurance. The Billings Clinic comments that the purpose of SB 354 was to secure and enhance access to physician services for Medicaid clients by removing a financial barrier to physician participation in Medicaid. "Access to primary and preventive medical services reduces avoidable, more costly use of emergency departments therefore Montana Medicaid should set rates that ensure Montana physicians are willing to see Medicaid patients." Not implementing the scheduled 6% physician rate increase, undermines the long-term goal of all Montanans having access to affordable coverage.

Billings Clinic commented that it provides physician, hospital, and long-term care services in Billings and regional Montana clinics. It is a major Medicaid provider and Medicaid is an important payer. Failure to enact the scheduled physician rate increase will create additional financial burden for Billings Clinic and access problems for its patients. It continues to look for ways to reduce costs without compromising quality and patient safety standards and urges the department to amend the proposed rule to provide a rate increase for physicians and other medical providers.

COMMENT #3: Legislative Counsel commented as rule reviewer for the Children, Family, Health, and Human Services Interim Committee against maintaining physician rates in SFY 2011 at the SFY 2010 level. Its position is that the 2007 Legislature could require a 6% increase in the conversion factor used to calculate physician reimbursement rates for FY 2011, 2012, and 2013 regardless of actual revenue currently collected. "Given the clear statutory requirement that a 6% increase in the conversion factor (for physicians) is required, it seems impermissible to lower the increase below the 6% floor for FY 2011, 2012, or 2013. If the department desires to lower the conversion factor, it must do so legislatively. The executive branch is not allowed to lower the 6% floor using 17-7-140, MCA."

RESPONSE #1, #2, and #3: The department appreciates the effort and expertise of the commenters. It agrees that Medicaid programs must consider Medicaid clients' access to services and must set reimbursement rates high enough that health care providers, including primary care providers, have an economic incentive to accept Medicaid patients.

The department does not agree that Montana Medicaid patients cannot access primary care in Montana because of Medicaid's reimbursement rates. The

department reviewed utilization data prior to setting the rates in this rule and concluded that Montana Medicaid's primary care reimbursement rates and its client access rates compare favorably with other public health plans in Montana. Montana Medicaid also has implemented several programs including PASSPORT, utilization (bed fee) tax, provider based clinics and health improvement programs in efforts to reduce the improper usage of health care services and provide incentives for health improvement and appropriate primary care.

The department also does not agree with the commenters that it is statutorily mandated to increase the rate the state of Montana pays physicians for services to Montana Medicaid clients without regard to the state's projected general fund budget deficits. The Legislature also enacted 17-7-140, MCA, which states "the governor shall ensure that the expenditure of appropriations does not exceed available revenue."

The Legislature is bound by Article VIII, Section 9 (Mt. Const.) "Balanced budget. Appropriations by the Legislature shall not exceed anticipated revenue." The 2007 Legislature cannot compel spending in SFY 2011. The department does not agree that the Montana Legislature mandated that physicians would receive rate increases regardless of the impact on other providers. There is nothing in 53-6-125, 53-6-126, and 53-6-127, MCA to support increasing physicians' rates by decreasing the rates paid to all other Medicaid providers, which would be the result of holding spending at the SFY 2010 level while increasing physician reimbursement rates.

Despite the state's revenue shortfall, the department is attempting to hold all Medicaid providers' reimbursement rates constant at SFY 2010 levels. It is setting SFY 2011 rates at a level it hopes will avoid decreases in any provider groups' rates in SFY 2011.

The department does not agree with the commenters that the 2007 Legislature mandated an increase in physician rates in SFY 2011 regardless of actual revenues or the impact of the rate increase on other Medicaid programs and providers. If that were the case, physician provider rates would be listed in 17-7-140(2), MCA. This list does not include Medicaid provider rates paid to physicians as spending that may not be directed by the Governor.

The Legislature appropriates the Montana Medicaid budget but it does not set the rates Montana Medicaid pays its providers. The Legislature has unequivocally delegated to the department the responsibility for setting provider rates. See 53-6-101(8) and 53-6-113(3), MCA. The department does not take lightly its statutory authority to set Medicaid provider rates, including physician rates, at the SFY 2010 level. The department recognizes the contribution Medicaid providers make to quality health care and agrees with the commenters that access to physicians, in particular primary care physicians, is important for Medicaid clients. Montana has a history of attempting to maintain rates at a level that maintains access.

Montana Medicaid's reimbursement rates compare favorably to Medicare rates according to the Urban Institute's 2008 Medicaid Physician Survey. That organization's research shows Montana Medicaid average fee for all services is 3% more than the average fee for Medicare. The Urban Institute's survey also shows that Montana Medicaid rates compare favorably to other states' Medicaid rates. Montana's rates are approximately 33% higher than the U.S. average for state Medicaid rates.

COMMENT #4: The department commented that due to relative value unit (RVU) decreases specific to mental health services using the SFY 2010 conversion factor would reduce reimbursement rates to a level below SFY 2010 levels. As stated in the proposed amendment, the department is maintaining all provider reimbursement rates at the SFY 2010 level. The department did not know the impact of the RVU changes until after the proposed notice was published.

RESPONSE #4: The department will increase the conversion factor for mental health services to \$25.45 to maintain reimbursement at the SFY 2010 appropriated level.

4. The department intends for the adoption and amendment of these rules to be effective July 1, 2010.

/s/ GERALYN DRISCOLL
Rule Reviewer

/s/ ANNA WHITING SORRELL
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State June 14, 2010.