

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 3

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 2.43.2105 pertaining to basic ) AMENDMENT  
period of service )  
) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On March 25, 2011, the 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 March 11, 2011, 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; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail [dhelman@mt.gov](mailto:dhelman@mt.gov).

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

2.43.2105 BASIC PERIOD OF SERVICE (1) remains the same.

(2) Except as provided in (3), service ~~Service~~ credit of less than 160 hours in a calendar month constitutes part-time service.

(3) If the regularly established work schedule of a full-time employee who works at least 2,080 nonovertime hours in a fiscal year results in their employer reporting the employee to the Montana Public Employee Retirement Administration as working less than 160 hours in any month or months during that fiscal year, the employee shall receive one year of service credit.

~~(3)~~(4) remains the same.

AUTH: 19-2-403, MCA

IMP: 19-2-701, 19-3-904, 19-5-502, 19-6-502, 19-7-503, 19-8-603, 19-9-804, 19-13-704, MCA

REASON: Before implementing its online web-based reporting system, all employers covered by the Montana Public Employee Retirement Administration (MPERA)-administered retirement systems reported their retirement system member employees, their salaries, and their retirement system contributions to MPERA on a monthly basis. Monthly reports generally resulted in all full-time employees being reported as having worked at least 160 hours each month.

With implementation of online web-based reporting, employers are now required to report the same information no later than five working days after each regularly recurring payday. Since many employers pay on a weekly or biweekly basis, this process occasionally results in a full-time employee being reported as having worked less than 160 hours in a month, but then substantially more than 160 hours in an adjacent month. These reporting requirements can result and have resulted in a loss of service credit for certain members.

Affected members are generally shift-workers such as Montana Air National Guard firefighters, peace officers, or nurses employed by a state institution. The PER Board has received communication from both management and union representatives asking us to solve this problem for these workers. The proposed amendments ensure that full-time members receive a year of service credit for full-time work even if their schedule occasionally results in working less than 160 hours in one month.

The approach reflected in the proposed rule is the fairest and simplest way to address the concerns raised by management and union representatives to the PER Board.

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 Roxanne M. Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620; 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., March 11, 2011.

5. If persons who are directly affected by the proposed amendment 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 Dena Helman at the above address no later than 5:00 p.m., March 11, 2011.

6. If the PER Board 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 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 3,255 persons based on approximately 32,559 defined benefit retirement plan members as of December 2010.

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 4 above or may be made by completing a request form at any rules hearing held by the 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 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/ 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 January 31, 2011.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 8.94.3726 pertaining to ) PROPOSED AMENDMENT  
incorporation by reference of rules for )  
the CDBG program )

TO: All Concerned Persons

1. On March 2, 2011, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce 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 Department of Commerce no later than 5:00 p.m. on February 25, 2011, to advise us of the nature of the accommodation that you need. Please contact Becky Anseth, Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2865; fax (406) 841-2771; TDD (406) 841-2702; or e-mail [banseth@mt.gov](mailto:banseth@mt.gov).

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

8.94.3726 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2010-2011 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant (CDBG) Program FFY 2010 Application Guidelines for Housing and Public Facilities Planning Grants, FFY 2011 Application Guidelines for Public Facilities Projects, and FFY 2011 Application Guidelines for Housing and Neighborhood Renewal Projects; the Montana CDBG Economic Development Program FFY 2010 Application Guidelines for the CDBG Economic Development Program and FFY 2010 Application Guidelines for CDBG Economic Development Program Planning Projects; the Montana CDBG FFY 2011 Application Guidelines for the Neighborhood Stabilization Program (NSP); and the Montana CDBG Program and Neighborhood Stabilization Program (NSP) FFY 2010 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs.

- (2) The rules incorporated by reference in (1) relate to the following:
  - (a) policies governing the program;
  - (b) requirements for applicants;
  - (c) procedures for evaluating applications;
  - (d) procedures for local project start up;
  - (e) environmental review of project activities;

- (f) procurement of goods and services;
  - (g) financial management;
  - (h) protection of civil rights;
  - (i) fair labor standards;
  - (j) acquisition of property and relocation of persons displaced thereby;
  - (k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;
  - (l) project audits;
  - (m) public relations;
  - (n) project monitoring; and
  - (o) planning assistance.
- (3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at: [http://comdev.mt.gov/CDD\\_cdbg.asp](http://comdev.mt.gov/CDD_cdbg.asp), or [http://businessresources.mt.gov/BRD\\_CDBG.asp](http://businessresources.mt.gov/BRD_CDBG.asp), <http://commerce.mt.gov/default.aspx> or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule because the federal regulations governing the state's administration of the FFY 2011 CDBG NSP program and 90-1-103, MCA, require the department to adopt rules to implement the program. Local government entities must have these application guidelines before the entities may apply to the department for financial assistance under the CDBG NSP program. The Application Guidelines describe the federal and state requirements with which local governments must comply in order to apply for CDBG NSP funds.

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 the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2865; fax (406) 841-2771; e-mail [banseth@mt.gov](mailto:banseth@mt.gov); and must be received no later than 5:00 p.m., March 10, 2011.

5. Becky Anseth, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department 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 Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; fax (406) 841-2701; e-mail mkozel@mt.gov; or by completing a request form at any rules hearing held by the department.

7. 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 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 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.

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

/s/ KELLY A. CASILLAS  
KELLY A. CASILLAS  
Rule Reviewer

/s/ DORE SCHWINDEN  
DORE SCHWINDEN  
Director  
Department of Commerce

Certified to the Secretary of State January 31, 2011.



BEFORE THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	AMENDED NOTICE OF PUBLIC
Rules I through XLII, the amendment	)	HEARING ON PROPOSED
of ARM 37.97.101, 37.97.102,	)	ADOPTION, AMENDMENT, AND
37.97.105, 37.97.106, 37.97.110,	)	REPEAL
37.97.115, 37.97.128, 37.97.130,	)	
37.97.132, 37.97.206, 37.97.207,	)	
37.97.216, 37.97.230, and the repeal	)	
of ARM 37.97.118, 37.97.201,	)	
37.97.202, 37.97.213, 37.97.220,	)	
37.97.225, 37.97.226, 37.97.233,	)	
37.97.238, 37.97.239, 37.97.250,	)	
37.97.253, 37.97.254, 37.97.257,	)	
37.97.258, 37.97.259, 37.97.270,	)	
37.97.501, 37.97.502, 37.97.506,	)	
37.97.508, 37.97.519, 37.97.521,	)	
37.97. 522, 37.97.524, 37.97.526,	)	
37.97.528, 37.97.801, 37.97.805,	)	
37.97.809, 37.97.810, 37.97.811,	)	
37.97.815, 37.97.816, 37.97.817,	)	
37.97.820, 37.97.821, 37.97.822,	)	
37.97.825, 37.97.830, 37.97.831,	)	
37.97.832, 37.97.833, 37.97.836,	)	
37.97.837, 37.97.838, 37.97.842, and	)	
37.97.843 pertaining to youth care	)	
facility (YCF) licensure	)	

TO: All Concerned Persons

1. On September 23, 2010 the Department of Public Health and Human Services published MAR Notice No. 37-519 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2108 of the 2010 Montana Administrative Register, Issue Number 18.

2. The Department of Public Health and Human Services 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 Department of Public Health and Human Services no later than 5:00 p.m. on February 17, 2011 to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-9503; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The notice is amended to address comments from Legislative Services on the department's statement of reasonable necessity. All rules remain as proposed.

4. The statement of reasonable necessity is amended as follows:

RULE I YOUTH CARE FACILITY (YCF): QUALITY ASSESSMENT

This rule requires review of youth satisfaction surveys; documented incidents of physical escorts and physical restraints; and documentation of complaints, grievances, incident reports and medication errors. Youth input from satisfaction surveys aid the facility in improving its services for future clients. Trends seen in records on physical escorts and physical restraints will assist facilities in determining what measures are needed to reduce their use. Reviewing serious incident reports, grievances, and medication errors will guide facilities in how to prevent future occurrences. The department believes these three components are basic for any good quality assurance system. Alternatives include providing no framework for a quality assessment program, which the department believes will not serve the facilities' clients.

RULE II YOUTH CARE FACILITY (YCF): CHILD ABUSE OR NEGLECT AND SERIOUS INCIDENTS

Staff at all facilities that provide care to youth are statutorily mandated to report any suspected incident of child abuse or neglect under 41-3-201, MCA, regardless of the facility's response to the incident. The department believes that youth care facilities should have procedures for reporting and conducting internal investigations in order to take corrective action and prevent further occurrences.

RULE IV YOUTH CARE FACILITY (YCF): YOUTH TO AWAKE STAFF RATIOS

Under this rule, facilities have flexibility in determining the number of staff that are needed during the nights based on client needs. For instance, one additional staff person may be needed because a particular youth consistently tries to escape at night, or another youth likes to sneak into other youths' rooms and steal items. The facility may not need additional staff when those behaviors are not present. The department believes that Rule IV will result in cost savings for facilities.

RULE VI YOUTH CARE FACILITY (YCF): YOUTH RIGHTS

RULE XXVII YOUTH CARE FACILITY (YCF): SEARCHES

RULE XXVIII YOUTH CARE FACILITY (YCF): CONTRABAND

These rules copy the requirements in current rules for youth shelter facilities seen in ARM 37.97.815 through 37.97.820, and are proposed to apply to all facility types. Article II, section 15, of the Montana Constitution provides that all youth have the same fundamental rights as adults except when explicitly stated in other laws. The proposed rules assist in protecting those rights. Many facilities deal in delinquent behavior and must balance the youths' rights while protecting the safety of other

youth residents. Alternatives include having no enumerated rights and procedures, which may result in arbitrary and possibly illegal actions by facilities.

#### RULE XXVI YOUTH CARE FACILITY (YCF): CASE RECORDS

This rule consists of merging current ARM 37.97.216, 37.97.528, and 37.97.843 into one rule. It does not contain any new major requirements. There are small discrepancies in the current rules in that some may require more documentation than the others. Rule XXVI clarifies these discrepancies by requiring all of the documentation mentioned in these rules.

#### RULE XXX YOUTH CARE FACILITY (YCF): POTENTIAL WEAPONS

The department merged the requirements of ARM 37.97.522 and 37.97.837 into Rule XXX. Weapons can include conventional ones not used for hunting purposes, and reconfigured objects that can be used to harm others. Many youth served in youth care facilities have serious emotional disturbances; therefore, access to weapons must be limited to protect the life and safety of other youth and staff.

#### RULE XXXI YOUTH CARE FACILITY (YCF): INFECTION CONTROL

This rule is very general and provides the facilities flexibility in creating their own infection control procedures. These procedures are needed so that youth and staff are protected from communicable diseases that may lead to sickness, disability, or death. Depending on their ages, many youth are susceptible to contracting bacterial and viral infections due to their young development. Also, youth may not be up to date on required vaccinations. Anywhere where many people congregate leads to higher risks of infections such as Norovirus. For these reasons, the department is proposing Rule XXXI. Without it, the department is not assured that the facilities are safe for youth.

#### RULE XXXII YOUTH CARE FACILITY (YCF): ANIMALS AND PETS

This rule is needed because youth may have service animals or animals may be used as part of therapy. Visits from personal pets that reside in the youths' homes may aid in improving their emotional well-being. There are a variety of reasons why pets may be at youth care facilities. The procedures listed in Rule XXXII assist in preventing diseases and injury that may occur when humans are in contact with animals. The department decided that banning all animals was not an option. Youth with disabilities are legally protected under federal law to bring service animals with them. Animals also assist with treating youth who are dealing with mental and behavioral issues.

#### RULE XXXVI YOUTH CARE FACILITY (YCF): FOOD PREPARATION AND HANDLING

Depending on certain circumstances, some local health authorities may require a youth care facility to have a licensed food service. Absent a license, this rule provides minimal food safety requirements for hand washing, food temperature control, and kitchen sanitation. Cleanliness, especially with hands, is needed to prevent handlers of food from transmitting E. coli. To preserve the quality of food, hot and cold food items must be kept at certain temperatures to prevent spoilage and the growth of bacteria. Kitchens must be kept in a clean and sanitary state to prevent contamination of food when in contact with equipment, and cross-contamination with other food items.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210; no later than 5:00 p.m. on February 24, 2011. Comments may also be faxed to (406) 444-9744 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

/s/ Michelle Maltese  
Michelle Maltese  
Rule Reviewer

/s/ Anna Whiting Sorrell  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State January 31, 2011

BEFORE THE STATE COMPENSATION INSURANCE FUND  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 2.55.320 pertaining to )  
classifications of employments )

TO: All Concerned Persons

1. On November 26, 2010, the Montana State Fund published MAR Notice No. 2-55-40 pertaining to the proposed amendment of the above-stated rule at page 2675 of the 2010 Montana Administrative Register, Issue Number 22.

2. The Montana State Fund has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Nancy Butler  
Nancy Butler, General Counsel  
Rule Reviewer

/s/ Joe Dwyer  
Joe Dwyer  
Chairman of the Board

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

Certified to the Secretary of State January 31, 2011



BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.38.204 pertaining to maximum )  
organic chemical contaminant levels ) (PUBLIC WATER AND SEWAGE  
 ) SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On November 12, 2010, the Board of Environmental Review published MAR Notice No. 17-308 regarding a notice of proposed amendment (no public hearing contemplated) of the above-stated rule at page 2639, 2010 Montana Administrative Register, issue number 21.

2. The board has amended the rule exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

By: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.  
Chairman

Certified to the Secretary of State, January 31, 2011.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT AND
17.56.102, 17.56.309, 17.56.402,	)	ADOPTION
17.56.1001, and 17.56.1305 and the	)	
adoption of New Rule I pertaining to	)	(UNDERGROUND STORAGE
applicability, compliance inspections,	)	TANKS)
petroleum UST systems, fee schedule,	)	
permit issuance, and anti-siphon	)	
requirements	)	

TO: All Concerned Persons

1. On December 23, 2010, the Department of Environmental Quality published MAR Notice No. 17-314 regarding a notice of proposed amendment and adoption of the above-stated rules at page 2899, 2010 Montana Administrative Register, issue number 24.

2. The department has amended ARM 17.56.102, 17.56.309, 17.56.402, 17.56.1001, and 17.56.1305 and adopted New Rule I (17.56.205) exactly as proposed.

3. No public comments or testimony were received.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

By: /s/ Richard H. Opper  
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, January 31, 2011.



BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF AMENDMENT  
23.16.120 concerning loans and other )  
forms of financing )

TO: All Concerned Persons

1. On December 23, 2010, the Department of Justice published MAR Notice No. 23-16-218, regarding the public hearing on the proposed amendment of the above-stated rule at page 2903, 2010 Montana Administrative Register, Issue Number 24.

2. The Department of Justice has amended ARM 23.16.120 exactly as proposed.

3. A public hearing was scheduled on January 19, 2011. No interested parties appeared for the hearing. Written comments were received from Neil Peterson, executive director, Gaming Industry Association of Montana, Inc. (GIA), who wrote in general support of the proposed amendment.

By: /s/ Steve Bullock  
STEVE BULLOCK  
Attorney General, Department of Justice

/s/ J. Stuart Segrest  
J. STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State January 31, 2011.

BEFORE THE DEPARTMENT OF LIVESTOCK  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT AND  
ARM 32.3.220 and 32.3.401 pertaining ) ADOPTION  
to semen shipped into Montana and )  
brucellosis definitions, and the adoption )  
of new rules I through V pertaining to )  
designated surveillance area and )  
penalties )

TO: All Concerned Persons

1. On October 28, 2010, the Department of Livestock published MAR Notice No. 32-10-214 regarding the proposed amendment and adoption of the above-stated rules at page 2485 of the 2010 Montana Administrative Register, issue number 20. On December 9, 2010, the department published an amended notice and extension of comment period on the proposed amendment and adoption of the above-stated rules at page 2797, 2010 Montana Administrative Register, issue number 23.

2. The Department of Livestock has amended and adopted the following rules as proposed: 32.3.220, 32.3.401, New Rule I (32.3.433), and NEW RULE II (32.3.434) exactly as proposed.

3. The department has adopted the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE III (32.3.435) TESTING WITHIN THE DSA (1) The following official brucellosis test requirements apply to all test eligible animals that are or have been located within the DSA boundaries ~~at any time between January 15 and June 15~~ of any calendar year:

~~(a) an annual test;~~

(b) remains as proposed but is renumbered (a).

(2) A test completed July 16 or after is ~~accepted~~ acceptable for movement out of the DSA or change of ownership through February 15 of the following year.

(3) remains as proposed.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA

IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

NEW RULE IV (32.3.436) VACCINATION WITHIN THE COUNTIES IN WHICH THE DSA IS LOCATED (1) ~~Official Calfhoo~~ Official Calfhoo Vaccination (OCV) is required within the entirety of counties in which the DSA is located, all sexually intact female cattle and domestic bison that are four months of age or older as of January 1 of any year must be Official Calfhoo Vaccinates (OCV).

- (a) Female cattle or domestic bison that are not OCV eligible may become Official Adult Vaccinates (AV) ~~following a negative brucellosis test.~~
- (b) remains as proposed.

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-110, 81-2-111, MCA

NEW RULE V (32.3.437) PENALTIES (1) Persons found to be in violation of rules or laws relating to brucellosis ~~are subject to~~ may be:

(a) ~~a \$100 fee to the Department of Livestock, per animal, for failure to comply with ARM 32.3.438 (REF 81-2-102(c), MCA);~~ guilty of a misdemeanor as described in 81-2-113, MCA; and

(b) ~~subject to any additional~~ departmental expenses regarding the investigation if a violation of law has taken place, as defined in 81-2-109, MCA.

~~(2) Disputes will be heard by the Board of Livestock according to contested case rules of MAPA.~~

~~(3) In addition to the fees and expenses imposed in (1) any person, persons, firm, or corporation that fails to comply:~~

~~(a) may be guilty of a misdemeanor as described in 81-2-113, MCA; or~~

~~(b) may face civil liability as described in 81-2-114, MCA.~~

AUTH: 81-2-102, 81-2-103, 81-2-104, MCA  
IMP: 81-2-101, 81-2-102, 81-2-103, 81-2-104, 81-2-105, 81-2-109, 81-2-110, 81-2-111, 81-2-113, 81-2-114, MCA

4. 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: It is unfair to require testing in the future if there is no funding to cover the cost.

RESPONSE #1: Funding the brucellosis surveillance program remains a priority for Montana Department of Livestock (MDOL). If funding is reduced, the MDOL may adjust mandatory testing requirements; however, the continued marketability of Montana's cattle depends on continued surveillance in areas of enhanced risk regardless of funding availability and funding source.

COMMENT #2: The money should be spent on vaccine development rather than imposing more rules and regulations.

RESPONSE #2: MDOL supports development of better vaccine for livestock and wildlife. Funding appropriated by the 2009 Legislature was specifically directed to fund the state's brucellosis program and to reimburse for brucellosis testing and adult vaccination.

COMMENT #3: There is no language in this rule to allow for testing out of these requirements or eliminating the Designated Surveillance Area (DSA).

RESPONSE #3: Risk mitigation and surveillance activities will be necessary as long as a risk from wildlife transmission exists.

COMMENT #4: Language stating that herd plans should be reviewed annually is too vague.

RESPONSE #4: MDOL is proposing to eliminate the annual herd test requirement in the final rule. Whole-herd testing will be conducted as part of a voluntary Certified Brucellosis-Free Herd program, as part of the epidemiological investigation, as requested by producers, and if MDOL assesses that there is an increased risk of brucellosis infection.

It should be noted that currently, there is no indemnity funding for positive animals. The lack of regular whole-herd testing is likely to result in a higher herd infection rate once a herd is found to be affected with brucellosis. Therefore detections may create a greater financial impact on a producer's operation than if the disease was found earlier.

The 2008 Montana herd had only one positive animal. The 2010 Montana herd had three positive animals out of 3200 tested (a prevalence of .09 percent at detection). It is highly likely that at the time of detection, the infection rate within these herds would have been higher if surveillance was limited to change of ownership and MCI testing.

COMMENT #5: The existing DSA rules and proposed changes may be inconvenient for those of us in the DSA, but they seem to be working and it's better than penalizing the whole state.

RESPONSE #5: The DSA regulations allow for standardized testing requirements for DSA cattle (3.6 percent of the geography of the state) while alleviating the unnecessary burden of testing for the remaining part of Montana.

COMMENT #6: The reimbursement to veterinarians for testing is too high. A sliding scale based on number of animals tested is more appropriate.

RESPONSE #6: Comments regarding veterinary reimbursement rates are outside the scope of the proposed administrative rule. However, MDOL agrees that a sliding scale is the most appropriate to ensure that veterinarians are willing and able to test small groups of animals and has been implemented January 1, 2011. This new rate is \$12/head for up to 10 tests, \$10/head for 11-50 tests, and \$7.50/head for 51 head and over.

COMMENT #7: There were several comments regarding the availability of the Board of Livestock to attend the public meetings. Also, there was a request that a BOL member reside in the DSA.

RESPONSE #7: The location of residence of the BOL is outside the scope of the proposed administrative rule. The MDOL is directed by a seven-member board of livestock producers appointed by the Governor.

COMMENT #8: Turning the official order into a rule makes the DSA boundary more permanent and inflexible.

RESPONSE #8: The proposed administrative rule provides consistency while allowing for adjustment to the boundary through rulemaking. In case a change is needed quickly, an emergency rule can also be promulgated. For additional information, please see response #85.

COMMENT #9: What happens if brucellosis is found in wildlife outside of the current boundary?

RESPONSE #9: MDOL places a high priority on obtaining more complete and accurate information on the prevalence and distribution of infected elk in the state of Montana. This information is particularly important at the boundary of the area that infected elk are known to exist and directly affects the location of the DSA boundary. Findings of brucellosis in wildlife outside of the DSA boundaries will be reviewed with other information regarding likely location of those animals during the time of year when the disease is most likely to be transmitted.

COMMENT #10: The process for redrawing the boundary is unclear.

RESPONSE #10: Please see the response #9 above. The DSA boundary is determined by findings of brucellosis in wildlife, likely location of those animals during the transmission season, and geographical and political boundaries that allow enforcement.

COMMENT #11: The DSA boundary should not be based on elk surveillance during the hunting season when it's the abortive season that we're concerned with.

RESPONSE #11: Locations of infected elk during hunting season was only one factor among several used to determine the DSA boundary. For additional information, please refer to responses #9 and #10.

COMMENT #12: The DSA will only increase in size due to the increasing size of elk herds.

RESPONSE #12: The prevalence of brucellosis infection in Montana elk has increased significantly from the early 1990s. The geographical extent of infected elk has also likely increased, but data are not as definitive on this issue. These changes

necessitate the MDOL to regularly review the boundaries of the DSA to ensure that Montana does not export diseased cattle. The DSA boundary will be adjusted based on the best available information.

COMMENT #13: How many positive elk found outside the current DSA boundary will it take to redraw the lines?

RESPONSE #13: It is impractical and unreasonable to establish an exact number, because the locations where animals are harvested, and the movements during the spring transmission time are not exact. For additional information please see responses #9 and #10.

COMMENT #14: It doesn't make sense to collar and release elk that have tested positive for brucellosis.

RESPONSE #14: This comment is not within the scope of the proposed administrative rule. However the proposed elk study project by Montana Department of Fish, Wildlife and Parks (FWP) will provide critical information regarding brucellosis prevalence, elk movement, reproductive success or failure, and persistence of the disease in elk in areas of Montana where little information is currently available. Further, the study area will focus on the boundary where brucellosis-positive elk are thought to exist, and therefore, the number of elk testing positive that are collared and released should be few (one to five of the 100 captured in a year). The increased understanding of brucellosis in wildlife will outweigh the risk of leaving these few animals in the elk population until the end of the study at which time they will be removed.

COMMENT #15: Elk testing is a waste of money because the DSA boundaries are already drawn and cattle testing rules are already in place.

RESPONSE #15: This comment is not within the scope of the proposed administrative rule; however, testing requirements and DSA boundaries can be adjusted based on new information. For additional information, please see response #14.

COMMENT #16: We need to focus more on cleaning up brucellosis in the wildlife rather than imposing more requirements on producers.

RESPONSE #16: This comment is outside the scope of the proposed rule; however, MDOL is having continual dialogue with the Montana Department of Fish, Wildlife and Parks (FWP) on elk brucellosis issues including a joint session of the Board of Livestock (BOL) and the FWP Commission on November 17, 2010. Reversing the trend of increasing brucellosis prevalence in Montana wildlife remains a priority. Brucellosis prevention and testing on DSA livestock needs to be conducted in conjunction with efforts to decrease the prevalence of brucellosis in wildlife.

COMMENT #17: The increase in wolf numbers has caused changes in elk behavior, creating a higher likelihood that elk and cattle will interact.

RESPONSE #17: This comment is outside the scope of the proposed administrative rule; however, MDOL is engaging with producers and with FWP on how to mitigate new and possibly increasing risks.

COMMENT #18: Producers are doing their part in brucellosis surveillance, but what is FWP doing?

RESPONSE #18: This comment is outside the scope of the proposed rule; however, please see response #16.

COMMENT #19: The rule still does not address the disease or the transmission of the disease between wildlife and livestock, it only extends the surveillance and testing burden to livestock producers in the DSA.

RESPONSE #19: FWP is legislatively tasked with managing most wildlife in the state of Montana. The MDOL is tasked with disease control in livestock. For additional information please refer to response #43.

COMMENT #20: The proposed rule treats the area producers as the problem and ignores the source, punishing the very people who have to work with the resulting problems.

RESPONSE #20: Please see responses #16 and #19.

COMMENT #21: Producers don't want to have to vaccinate heifer calves if they are not being kept as replacements.

RESPONSE #21: The proposed rule requires vaccination of all female calves (replacement and feeders) because MDOL desires to prevent brucellosis infection of cattle regardless of future use. For additional information, please see responses #25 and #26.

COMMENT #22: It is unclear when you will be in violation of the official calfhood vaccination (OCV) requirement if it must be done between 4 and 12 months of age.

RESPONSE #22: The rule requiring official calfhood vaccination will most frequently be enforced prior to sale of animals. Enforcement of the vaccination requirement for animals not changing ownership or remaining within the DSA will be made as the MDOL becomes aware of violations. For more information please see responses #25, #26, and #64.

COMMENT #23: Don't want to vaccinate heifers prior to 12 months of age if they are eventually going to be spayed.

RESPONSE #23: MDOL supports spaying heifers not intended for breeding. For nonvaccinated heifers that will be spayed following a change of ownership, a quarantine may be issued until the procedure is performed.

COMMENT #24: Having a mandatory statewide OCV requirement would be beneficial.

RESPONSE #24: The MDOL conducted seven public meetings in 2010 to solicit producer feedback on a proposed mandatory, statewide, calfhood vaccination requirement. While some producers favored such a requirement, the majority of feedback that MDOL received did not support it. The Montana Board of Livestock considers, but did not make a determination on the proposed statewide vaccination requirement during the January meeting (Jan 18-19, 2011).

COMMENT #25: Countywide OCV requirement in the four counties doesn't seem fair.

RESPONSE #25: Vaccination of calves against brucellosis is a best management practice. Further, the majority of Montana cattle producers already vaccinate their female calves; therefore, the proposed rule is not expected to pose an unreasonable burden on Montana producers. The proposed rule requires countywide calfhood vaccination: 1) to ease movement of female calves across the boundary of the DSA within a county, and 2) because the risk of transmission or the extent of elk movements during the risk period in some parts of MT is not fully understood.

However, MDOL understands that brucellosis vaccinating "fall" calves as they are leaving the DSA has a minimal impact on reducing risk of infection. MDOL has amended the draft rule from all females to "all females four months of age and older by Jan 1 of any year". This would minimize the number of susceptible (nonvaccinated) females in the DSA during the elk abortion and calving season.

COMMENT #26: Some management practices don't allow for much handling prior to taking animals to market; getting them vaccinated is not necessarily feasible.

RESPONSE #26: With the proposed changes to the OCV requirement as described in response #25, only OCV eligible females in the DSA on January 1 need to be vaccinated. Therefore, the number of animals needing handling is significantly reduced, with proportionate reduction in cost, and facilities needed. Exceptions can be made with prior approval of the state veterinarian.

COMMENT #27: The Board of Livestock is responsible for appeals to the penalty fines, but they are not an unbiased judge. There should be a disinterested third party responsible for any appeals.

RESPONSE #27: Please see response #64.



COMMENT #28: Penalty is too strict for producers who aren't in the DSA. The fine is overly aggressive and could be better handled in another manner.

RESPONSE #28: The proposed penalty assessed needs to be equivalent or greater than the violator's economic benefit derived from the violation. However, MDOL is proposing to change the final rule language to reflect authority provided in 81-2-113, MCA. For additional information, please refer to response #64.

COMMENT #29: How to determine whether an animal is an official calfhood vaccinate is unclear and using the fine to penalize producers who have animals with lost tags or illegible tattoos is unfair.

RESPONSE #29: The MDOL does not intend to levy fines in cases of individual animals where vaccination tattoos are illegible or tags have been lost. Violations will be considered on a case-by-case basis.

COMMENT #30: There have been only six cases of brucellosis in the last 25 years. MCI trace back has identified all but one of the six infections.

RESPONSE #30: Since the year 2000, Wyoming found seven affected herds, Montana found three affected herds, and Idaho found four affected herds for a total of 14 herds. Seven of these detections took place in the last three years, and only one of these (Idaho) was found by MCI.

COMMENT #31: Establish DSA based on wildlife infection surveillance that is statistically significant.

RESPONSE #31: Obtaining adequate sample numbers from elk has been a challenge. MDOL has been working closely with FWP to enhance sample collection in the most critical areas. This is the focus of the recently announced elk study project funded by USDA-APHIS and executed by FWP.

COMMENT #32: Testing requirements are more aggressive than necessary and are not financially sustainable.

RESPONSE #32: MDOL has proposed to remove the requirement for annual whole-herd testing. For additional information, please see response #4.

COMMENT# 33: Testing eligibility age should be raised to 18 months because animals don't abort or calve until 20 months of age or older. Please cite a reference.

RESPONSE #33: While cattle may not abort until they reach reproductive age, the animals are susceptible to infection at an earlier age. It is highly desirable to detect positive animals prior to abortion and calving when the disease is readily spread. USDA-APHIS interim rule on brucellosis published on December 27, 2010 requires that cattle six months of age and older be included in herd testing. The rule can be

found here: <http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0083-0001>

COMMENT #34: Testing requirements should be limited to MCI (at slaughter), and testing at change of ownership.

RESPONSE #34: The MCI testing program has historically been, and will remain important in detecting brucellosis in adult animals. Likewise, the change of ownership test has been useful in detecting cases of brucellosis in Wyoming in 2009 and 2010.

Please see responses #4 and #30 for additional information.

COMMENT #35: Based on the forthcoming revision of federal brucellosis rules, it should be permitted to adult vaccinate animals without a brucellosis test.

RESPONSE #35: Adult vaccination was not addressed in the USDA-APHIS interim rule on brucellosis published on December 27, 2010. This issue is likely to be discussed and addressed by the Tuberculosis-Brucellosis Working Group that has been charged with the more comprehensive revision of federal rules.

COMMENT #36: A commenter disagreed with the economic impact of Rule I.

RESPONSE #36: MDOL maintains that the boundary in itself does not create an economic impact. The financial impact of testing requirements within an established surveillance area, are addressed in a latter section.

COMMENT #37: The two dollar reimbursement rate to producers "does not justify random testing."

RESPONSE #37: MDOL recognizes that surveillance for brucellosis has a financial impact on producers. Two dollars per animal helps reduce, but not eliminate this impact. The state of Wyoming and Idaho do not provide producer reimbursement.

COMMENT #38: Even if the operation is within the DSA, testing should not be required if there is no risk of comingling with elk.

RESPONSE #38: Herd plans help describe and quantify risk. However, because of the inherent difficulties in quantifying risk of exposure to brucellosis, some level of brucellosis surveillance of livestock within the surveillance area is necessary.

COMMENT #39: Brucellosis needs to be cleaned up from Yellowstone National Park and Montana elk.

RESPONSE #39: This comment is outside the scope of the draft rule; however, MDOL supports all efforts to reduce prevalence of brucellosis within the Greater Yellowstone Area.

COMMENT #40: There are no livestock producers on the Board of Livestock.

RESPONSE #40: This comment is outside the scope of the draft rule. However, the seven-member Board of Livestock is exclusively composed of livestock producers including four representing the beef cattle industry, one dairy, one pork, and one representing the sheep industry.

COMMENT #41: Carbon County should be included in the DSA because of the 2007 affected herd.

RESPONSE #41: The epidemiologic investigation of the 2007 brucellosis-affected herd concluded that the most likely source of exposure for the index animal was in Park County, Montana where the animal was raised after weaning and bred before returning to Carbon County.

Additionally, consultations with FWP suggest that there is little likelihood of brucellosis-positive elk from Wyoming moving north in that section of the state.

Further, MDOL analyzed over 14,000 samples from Carbon County since 2007 with no additional positive samples aside from those related to the affected herd.

COMMENT #42: Official order currently in place is appropriate, but to replace it with administrative rule is not.

RESPONSE #42: Prior to publication of the draft administrative rule, MDOL received numerous comments stating that an administrative rule is more appropriate than an official order. Because brucellosis surveillance is likely to continue for the foreseeable future, and is now required by federal rule (see response #33), MDOL feels that an administrative rule is a more appropriate regulatory mechanism. This position has been supported by findings of the Economic Affairs Interim Committee (EAIC), a joint bipartisan committee of the Montana Legislature that reviewed DSA regulations.

COMMENT #43: The MDOL DSA official order does not address the transmission of the disease between wildlife and cattle.

RESPONSE #43: The draft administrative rule addresses the risk of transmission of disease by encouraging producers to participate in a risk mitigating herd plan and requiring vaccination and testing.

COMMENT #44: The economic impact to livestock producers including "equipment costs, labor costs, lost profits, and vaccination costs" is not recognized.

RESPONSE #44: Please see response #37.

COMMENT #45: The DSA was designated by FWP, not by science and testing.

RESPONSE #45: Please see responses #9, #10, and #11.

COMMENT #46: The limited number of affected herds in Montana does not justify the surveillance.

RESPONSE #46: Please see response #34.

COMMENT #47: The surveillance program should be less "costly" and "burdensome" to the producer.

RESPONSE #47: Please see responses #4, #32, and #37.

COMMENT #48: DSA boundaries were established in an arbitrary fashion. For example, Hunting District (HD) 317 had no infected elk using the Western Blot test (WB).

RESPONSE #48: Surveillance results combined with other information such as elk migratory movement is important information used to establish the DSA. Specifically regarding HD 317, of three samples collected, all were WB negative, but one of these tested as suspect based on a validated (captive) cervid testing protocol for a 33 percent prevalence.

While the WB may be helpful in some situations, it is not a valid test, and has shown some significant error in this use. Page 16 of the 2009-10 Elk Surveillance Report published by FWP, Neil Anderson, et al., describes the WB being wrong 66 percent of the time on six samples that were confirmed positive by culture.

Lastly, *Brucella abortus* culture was isolated from a cow elk in HD 317 confirming that positive elk reside in this hunting district.

COMMENT #49: MDOL is encouraging migration of infected bison into Montana by being a signatory to the Interagency Bison Management Plan (IBMP). Asking producers to mitigate risk of elk is unreasonable based on the risk from Yellowstone bison which are 30-40 percent positive for brucellosis.

RESPONSE #49: The IBMP is the result of a Record of Decision issued by a federal court which requires two state and three federal agencies to cooperate to manage Yellowstone National Park (YNP) bison. Testing is required for cattle at risk of brucellosis transmission from bison and elk just as it is required for producers facing a risk exclusively from infected elk.

COMMENT #50: MDOL shouldn't change the state brucellosis rules ahead of publication of rules proposed by USDA-APHIS.

RESPONSE #50: The federal interim rule was published December 27, 2010. Please see response #33.

COMMENT #51: Annual whole-herd testing is burdensome and time consuming.

RESPONSE #51: Please see responses #4, #32, and #37.

COMMENT #52: Beef producers should not be penalized for raising cattle in a county surrounding YNP until Montana addresses the issue in wildlife.

RESPONSE #52: This comment is beyond the scope of the draft rule; however, MDOL supports efforts to eliminate brucellosis from wildlife. The recently published federal interim rule on brucellosis requires a state with a wildlife brucellosis reservoir to establish a disease management plan to maintain Class Free Status.

COMMENT #53: Support statewide OCV because elk are spreading to new areas because of wolves.

RESPONSE #53: Please see response #24.

COMMENT #54: Need to adjust the area of the DSA based on new information to encompass all at risk areas.

RESPONSE #54: MDOL is continually evaluating new information to determine the most appropriate DSA boundary. Two areas of particular interest include:

- a. North outside of the DSA, lands north of the Highway 84 (Norris Rd.) east of Four Corners
- b. Southwest outside of the DSA, lands west of Price Lane between Southside Centennial Road on the north and the Idaho border to the south. Additional information on this area is forthcoming from an elk study conducted by Idaho Fish and Game as well as a FWP-led elk capture study directly to the north.

COMMENT #55: The DSA boundary in the Centennial Valley should be moved east to exclude the valley floor. Elk do not calve on the valley floor.

RESPONSE #55: The presence of brucellosis-positive elk has been well documented in this area. While the nature of this presence is often transient, the boundaries of the DSA need to circumscribe the range of brucellosis-positive elk during the high-risk time. The extent of interaction of these elk with livestock will be evaluated through the herd plan process. For additional information, please see response #54 (b).

COMMENT #56: DSA producers are being punished with strict testing and vaccinating regulations so that the rest of the state doesn't have to do anything.

RESPONSE #56: Regardless of requirements in other parts of the state, cattle originating from the DSA will require testing through a state program, import restrictions by other states, or federal brucellosis rules. However, it is noted that a

strong state program focused on an area of increased risk allows non-DSA cattle that have little risk of brucellosis to move more freely in commerce.

COMMENT #57: If a herd has already been tested and there is never any elk contact, continued testing should not be required.

RESPONSE #57: It is difficult to establish zero risk of brucellosis transmission from elk due to shifting and sometimes uncertain information on elk movement and disease prevalence. For "low-risk" DSA herds, it is desirable to maintain a commensurate low level of surveillance such as change of ownership, movement, and MCI testing. For additional information, please see response #4.

COMMENT #58: Testing should be required only if a major interaction between elk and cattle occurs.

RESPONSE #58: Not all elk-cattle interactions are witnessed or reported. For further information please see response #57.

COMMENT #59: If the DSA boundaries expand, MDOL needs to be ready to handle the resulting increase in funding that will be necessary.

RESPONSE #59: Please see response #1.

COMMENT #60: Requiring OCV in the entirety of the four counties is outside the boundaries of the DSA and therefore is an expansion of the DSA.

RESPONSE #60: Only the parts of the four counties of Beaverhead, Madison, Park, and Gallatin that are in the DSA have testing requirements on cattle. The remaining parts of the counties only have a calfhood vaccination requirement and do not have DSA associated testing requirements. OCV is a best management practice and should be implemented in the Greater Yellowstone Area regardless of state regulations.

COMMENT #61: OCV should be required for all producers in the DSA and adult vaccination of any animals that are not OCV.

RESPONSE #61: MDOL strongly supports calfhood vaccination, and adult vaccination for non-OCV adults. The proposed rule is consistent with this position.

COMMENT #62: The rule needs to state that OCV in the four counties is mandatory, not "should be done" because that creates confusion.

RESPONSE #62: MDOL has changed the draft rule to state "Within the entirety of counties in which the DSA is located, all sexually intact females cattle and domestic bison four months of age or older as of January 1 of any year must be Official Calfhood Vaccinates (OCV)".

COMMENT #63: It needs to be stated in a straight forward manner whether bull calves need to be vaccinated or not.

RESPONSE #63: While only intact female calves between 4-12 months of age are defined as eligible for calfhood vaccination by federal regulations, male cattle are also susceptible to infection. Because a herd with male cattle testing positive for brucellosis would be considered a "brucellosis-affected herd", MDOL has been encouraging producers to also include these animals in brucellosis vaccination programs.

COMMENT #64: MCA 81-2-102 (c), does not give MDOL the authority to assess penalties for noncompliance. Therefore, this portion of the rule should be dropped.

RESPONSE #64: MDOL has revised the draft rule to state:

(1) Persons found to be in violation of rules or laws relating to brucellosis may be:

- (a) guilty of a misdemeanor as described in 81-2-113, MCA; and
  - (b) subject to any additional departmental expenses regarding the investigation if a violation of law has taken place, as defined in 81-2-109, MCA.
- MDOL believes 81-2-102(d), MCA provides legal authority to promulgate New Rule V.

COMMENT #65: Do lost tags/inability to get a tag into a particular animal because of risk of injury constitute noncompliance.

RESPONSE #65: Please see response #29.

COMMENT #66: The MDOL has violated our constitutional rights to a clean and healthful environment by allowing this disease to reach our ranches and therefore has not legally fulfilled its responsibility to the livestock industry.

RESPONSE #66: The MDOL has not violated the right to a clean and healthful environment in any way. It is unclear if a naturally occurring disease could ever trigger a violation of the constitutional right in question. The department has taken many actions including the one contemplated by this rule to stop the spread. Nothing in this rule affects this comment.

COMMENT #67: The concept of the DSA is understandable, but requirements on DSA producers are more stringent than needed.

RESPONSE #67: MDOL strives to promulgate regulations that will be successful in finding disease and continue the desirability of Montana's cattle while creating the least burden possible. Please see responses #4, 25, and #32.

COMMENT #68: Mandatory ID on test-eligible animals should only be implemented if and when they are actually tested.

RESPONSE #68: MDOL understands that animals will be identified most frequently at the time they are tested or processed for other reasons. Traceability of animals leaving the DSA is a critical priority. Animals meeting identification requirements based on DSA requirements need to be identified prior to or at the time they leave the DSA.

COMMENT #69: The reference to elk hunting seasons and the determination of the DSA boundaries from FWP data gathered during hunting seasons is arbitrary and should be removed from the ARM.

RESPONSE #69: While imperfect, hunter-harvested surveillance samples currently are, and will likely remain a critical source of information on prevalence of brucellosis in elk, and the distribution of these animals. The reference to hunting seasons is in the background information of New Rule I and is not part of the text of the administrative rule.

COMMENT #70: Considering budgets and manpower needed for enforcement, a DSA that can be implemented and removed as needed makes more sense (i.e. if the DSA is disease free – no seropositive cattle – for a period of three years, then the DSA and its activities are suspended).

RESPONSE #70: Federal rules (as explained in response #33) require a state with a wildlife reservoir of brucellosis to establish a disease management area. As a matter of record, the state of Montana has found three herds affected with brucellosis in four years. For further information, please see responses #1, #30, #42, and #57.

COMMENT #71: Statutorily, the state vet is tasked with protecting all livestock within the state of Montana, but there is no protection for the livestock within the DSA – only regulations.

RESPONSE #71: One of the primary responsibilities of the state veterinarian as directed in 81-2-102(d), MCA is to prevent the introduction and spread of communicable disease. In an area of increased risk of brucellosis transmission, this responsibility is met through risk mitigating herd plans, vaccination requirements, and testing of the cattle population.

COMMENT #72: Significant changes to the DSA should be delayed until the comment period closes on the interim federal rule and USDA APHIS publishes final rule.

RESPONSE #72: There are a number of changes necessary to the official order regardless of the federal rule that include removal of the annual herd testing requirement (response #4), vaccination requirement changes (response #25), and to remove references to counties only included in the Brucellosis Action Plan (Stillwater, Sweet Grass, and Carbon).



COMMENT #73: Madison County should not be included in the DSA because there have been no herds with brucellosis diagnosed in the county.

RESPONSE #73: The 2010 affected herd spans a boundary between Gallatin and Madison County. Further information on the geographical range of brucellosis-positive elk documents presence in Madison County.

COMMENT #74: The risk period established by MDOL of January 15 through June 15 is longer than the abortion season when there is greatest risk of transmission. Public land grazing allotments are being limited for ranching based on this date designation.

RESPONSE #74: While MDOL recognizes that the abortion period taking place in January and February is often of greatest risk, potential interactions between elk and livestock do occur through the elk calving season which continues through the month of June. It is not desirable to limit grazing opportunities based on this information, but likewise it is unreasonable to suggest that no risk exists. MDOL has removed reference to June 15 in the final MDOL rule.

COMMENT #75: The three state governors (MT, WY, ID) need to pressure the Federal Fish and Wildlife Service, the U.S. Park Service, and the three state wildlife agencies to take an active role in controlling brucellosis in bison and elk.

RESPONSE #75: This comment is outside of the scope of the proposed rule. However, Montana's governor strongly supports elimination of the disease from the Greater Yellowstone Area when tools to accomplish this are available.

COMMENT #76: The June 15 date to enter the DSA causes undue hardship on producers and takes away their grazing rights and property rights and creates the impression that groups are trying to push livestock off public lands.

RESPONSE #76: Producers are able to graze their cattle in the DSA any time of the year. Utilizing the area during a period when the risk transmission of brucellosis from wildlife increased requires some additional surveillance. Please see response #4 and #74.

COMMENT #77: MDOL should allow variances to June 15 date through herd plans.

RESPONSE #77: Please see responses #4, #74, and #76.

COMMENT #78: Having a DSA decreases property values for producers in the area.

RESPONSE #78: This comment is outside of the scope of the proposed rule. However, MDOL is cognizant of the additional burden of brucellosis testing and strives to create regulations that are least obstructive to commerce, while ensuring that brucellosis-positive livestock could not leave the area.

COMMENT #79: Producers should not be required to revaccinate adult cattle unless there have been seropositive cattle found in their herd.

RESPONSE #79: Adult vaccination remains a voluntary, best management practice. Adult vaccination has been shown to dramatically improve the immunity to brucellosis infection, and MDOL encourages producers that do have risk commingling with brucellosis-positive elk to consider adult vaccination.

COMMENT #80: Redirected funds from costly bison hazing and slaughter operations could be used to support producers in implementing the commendable OCV requirements in the DSA.

RESPONSE #80: This comment is outside of the scope of the proposed rule. However, MDOL does have limited discretion to apply bison management funds to DSA efforts.

COMMENT #81: Specific strategies MDOL could immediately support in the DSA include increasing strategic fencing, continuing frequent cattle testing, allowing only steers and spayed heifers in critical areas, and requiring calfhod and adult vaccination of all cattle in the GYA.

RESPONSE #81: Many of these practices are occurring already. MDOL does not support limiting grazing opportunities to some classes of animals based on brucellosis risk. Risk mitigation strategies and adequate surveillance should minimize the likelihood of transmission of the disease to cattle and exporting brucellosis-positive livestock.

COMMENT #82: MDOL should work with U.S. Fish & Wildlife Service and the State of Wyoming to begin phasing out all elk feedgrounds in WY.

RESPONSE #82: This comment is outside of the scope of the proposed rule. However, MDOL has participated in efforts to focus on the issue of winter feeding of elk, and discourage the practice. Please see the 2010 USAHA resolution from the brucellosis committee:  
<http://www.usaha.org/committees/resolutions/2010/resolution24-2010.pdf>.

COMMENT #83: MDOL can improve its program by allowing bison to roam more freely in low-risk areas outside Yellowstone National Park.

RESPONSE #83: This comment is outside of the scope of the proposed rule. However, the MDOL supports reducing the number of brucellosis-positive wildlife in the Greater Yellowstone Area, rather than increasing it.

COMMENT #84: Native wildlife need to be treated as wildlife, particularly in light of the fact that brucellosis originally came to the GYA from introduced cattle. MDOL and the industry should not ignore the broader public interest with respect to wildlife.

RESPONSE #84: This comment is outside of the scope of the proposed rule. MDOL regulations focus on risk mitigating activities and enhance surveillance in livestock.

COMMENT #85: Why couldn't we revisit every two years to see if the DSA and testing could be eliminated or reduced?

RESPONSE #85: The proposed rule is subject to Montana Administrative Procedures Act, [http://data.opi.mt.gov/bills/mca\\_toc/2\\_4.htm](http://data.opi.mt.gov/bills/mca_toc/2_4.htm), and will be subject to revision based on new information, changing needs of the industry, federal rule-making and other factors.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Department of Livestock

/s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State January 31, 2011.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New )  
Rule I (42.12.213) and amendment of )  
ARM 42.12.206, 42.12.208, )  
42.12.209, 42.12.210, and 42.12.212 )  
relating to liquor license transfers, )  
suspension, and revocation )

NOTICE OF ADOPTION AND  
AMENDMENT

TO: All Concerned Persons

1. On October 14, 2010, the department published MAR Notice No. 42-2-851 regarding the proposed adoption and amendment of the above-stated rules at page 2303 of the 2010 Montana Administrative Register, issue no. 19.

2. A public hearing was held on November 8, 2010, to consider the proposed adoption and amendment. No one appeared at the hearing to testify. Written comments received during the comment period following the hearing are summarized as follows, along with the responses of the department:

COMMENT NO. 1: The law firm of Crowley Fleck provided written comments on behalf of the Montana Bankers Association (MBA), expressing concern with the rules limiting the lenders' ability to loan money within their existing guidelines. They comment that the proposed regulation cannot limit the statute and that 16-4-801(4), MCA, contains no limitations that suggest the proposed edits to ARM 42.12.212(6) are appropriate. They specifically question the authority in ARM 42.12.212(6)(a), to restrict banks, and ask "why can't a bank lend with a guaranty from an outsider; i.e., spouse, family member, to assure its repayment?"

RESPONSE NO. 1: The department appreciates the MBA providing comments for this rulemaking action. The intention of these rules is certainly not to place a burden on lending institutions. The department has revised the proposed rules in an effort to remove language which inadvertently may have appeared to place an obligation on the lender. The rule seeks to reconcile the newly amended law with the existing law on ownership, 16-4-801(4), MCA, not to limit the statute. As per the new language in ARM 42.12.212(6)(c), an institutional lender would continue to be able to lend with a guaranty from an outsider, such as a spouse or family member, to assure repayment of the loan.

The department seeks only to make it clear, particularly to license holders, that allowing an outsider to make a payment on their loan could, whether intentionally or unintentionally, create an "ownership interest" in their license, as defined by ARM 42.12.106(14); and if by definition it does create an ownership interest, the guarantor would need to first apply and qualify for liquor license ownership before making a direct payment on the loan. In order for a licensee to remain in compliance and prevent the occurrence of an undisclosed ownership, ARM 42.12.212(6) demonstrates the required steps for licensees and their

guarantors if the guarantor is called on from the lender for payment on a loan.

It is also important to note that amendments made to 16-4-801(4), MCA, by the 2009 Legislature, did not change the qualification requirements for an individual having an ownership interest in a liquor license. The statute continues to require that each person having an interest in a liquor license, including those who make payment(s) as a guarantor on a loan secured by such license, meet all statutory qualifications to hold a liquor license prior to doing so.

Relative to lenders, 16-4-801(4), MCA, states: "[a] regulated lender, as defined in 31-1-111, may obtain a security interest in a liquor license in order to secure a loan or a guaranty of a loan. This section does not prohibit or limit the ability of a regulated lender to use loan and security documentation consistent with that used by the regulated lender generally, and the documentation does not constitute control of the operation of the business or the licensee operating the business that is subject to the security interest."

COMMENT NO. 2: The MBA further commented on ARM 42.12.212(6)(b) questioning how a bank would monitor where funds come from and, does this mean that if the funds come from a "bad" source, the bank is supposed to refuse a payment.

RESPONSE NO. 2: The department understands the MBA's concern with this section and has modified the language in ARM 42.12.212(6) in response to their concern. The rule does not require an institutional lender to refuse a payment. Rather, it outlines certain responsibilities of the licensee.

As noted in our response to the previous comment, in order for a licensee to remain in compliance and prevent the occurrence of an undisclosed ownership, ARM 42.12.212(6) demonstrates the required steps for licensees and their guarantors if the guarantor is called on from the lending institution for payment on a loan. As defined in ARM 42.12.106(14) a payment by a guarantor, or anyone, of a licensee's loan obligations (except via a loan made by the guarantor directly to the licensee) results in the guarantor sharing in the financial risks of the business, which constitutes an "ownership interest."

COMMENT NO. 3: The MBA also expressed concern that the reference to ARM 42.12.212(6)(c) appears to make the bank the enforcer, i.e., the bank is having to refuse payment under the guaranty unless the guarantor makes an application to the department. The MBA commented that they are unsure how this section would work in the real world when a bank makes a demand and the guarantor wants to bring the loan current.

RESPONSE NO. 3: The department appreciates this and all of the MBA's comments on these rules, and has modified the wording of ARM 42.12.212(6) accordingly to make it clearer that these are the responsibilities of the licensee, not the institutional lender.

COMMENT NO. 4: The MBA commented in regard to the proposed language in ARM 42.12.212(6)(d) that a bank has no way to force a guarantor to deal in a

certain way with the Internal Revenue Service, and recommends that this part not be included in (6), which only deals with institutional lenders. The MBA further comments that it should be a requirement of the licensee/guarantor, and not the bank.

RESPONSE NO. 4: The department has amended the rule to address this and other concerns expressed by the MBA, in an effort to remove language which appeared to place an obligation on the lender. As mentioned in the previous responses, ARM 42.12.212(6) demonstrates the required steps for a licensee to remain in compliance and prevent the occurrence of an undisclosed ownership by their guarantor if the guarantor is called on from the lending institution for payment on a loan. Additional detail concerning licensee reporting requirements, relative to ARM 42.12.212(6)(d), is provided in the response to comment number 10.

COMMENT NO. 5: The MBA also commented that ARM 42.12.212(6)(f) does not appear to be accurately placed in the rule, because (6) deals with guaranties with institutional lenders, while (f) is talking about loans to certain licensees; thus, MBA is confused as to if it is supposed to tie to the banks' guarantors.

RESPONSE NO. 5: The department agrees with the MBA and in order to improve the clarity of ARM 42.12.212, the department has moved section (6)(f) to a new section (8) in the rule.

COMMENT NO. 6: The department also received written comments from James M. Kaze, an attorney with the law firm of Bocsh, Kuhr, Dugdale, Martin and Kaze. Mr. Kaze commented on ARM 42.12.209(2), asking, "what if the potential buyer is NOT buying an interest in the license itself, but instead is buying an interest in the entity that holds the license? Will that transaction no longer be covered?"

RESPONSE NO. 6: The department appreciates Mr. Kaze's comments on these rulemaking actions. The proposed amendment to this rule does not change the current statutory requirements for qualification. The intent of the rule is to make it clear that ownership of a licensed entity is not limited to those holding "shares of stock." Any holder of an ownership interest of 10 percent or more in a liquor license, whether that interest is directly in the license itself or in the entity that holds the license, must first qualify with the department under the provisions of 16-4-401, MCA. In both the current rules and the proposed rules, each person having such an interest in a license must first qualify to hold a liquor license, as described by this statute.

COMMENT NO. 7: Mr. Kaze also commented on ARM 42.12.212(3)(b) stating "loans do not secure the license; the reverse is true." He suggests striking the word "securing" and replacing it with "secured by."

RESPONSE NO. 7: The department agrees with Mr. Kaze and has changed "securing" to "secured by" in this section.

COMMENT NO. 8: Mr. Kaze further commented that ARM 42.12.212(3)(c) "does not make sense as originally written" and proposed rephrasing it by striking the word "exercised" and adding in its place the phrase "resulting in the lender acquiring the license by reason of the default."

RESPONSE NO. 8: The department appreciates this suggestion and has stricken the word "exercised" from section (3)(c). The department believes this makes the provision clear.

COMMENT NO. 9: Mr. Kaze also commented that ARM 42.12.212(4) should be revised by changing "on" to "in" and by adding the phrase "institutional loans with security interests in" after "In securing."

RESPONSE NO. 9: The department agrees with Mr. Kaze and has revised the language to section (4) as he recommended.

COMMENT NO. 10: Mr. Kaze further commented on ARM 42.12.212(6)(d), writing, "I am not aware of any such annual election requirement under the Internal Revenue Code. In addition, this is an unclear statement of effect of the lender requiring payment from a guarantor in the event of a default by the borrower. If treated as anything other than a loan to the licensee, doesn't the fact that its treated as an equity contribution in an entity licensee create a potential license transfer requirement if it is greater than a 10 percent interest?"

RESPONSE NO. 10: Yes, Mr. Kaze is correct that a payment on behalf of the licensee by an owner/guarantor could mean an increased ownership interest, which would require the filing of either a Form 37 or a full application, depending on the specific circumstances. The Internal Revenue Code governs tax treatment of such payments for the guarantor and the licensee. Based on Mr. Kaze's comment, the department has amended this provision to address these concerns.

This proposed addition to the rule is based, in part, on current ARM 23.16.122, which describes how the Department of Justice evaluates loans related to alcoholic beverage and gambling licenses. The rule is based on definitions of "gains" and "losses" contained in Generally Accepted Accounting Principles (GAAP) 22.200, in conjunction with the definitions of "ownership interest" and "undisclosed ownership interested" contained in ARM 42.12.106.

3. Based on the comments received, the department amends ARM 42.12.212 as follows, stricken matter interlined, new matter underlined:

42.12.212 LOAN STANDARDS (1) and (2) remain as proposed.

(3) The department will require any noninstitutional lender to complete documents authorizing examination and release of information, a personal history statement, and fingerprint cards on forms provided by the department, as well as any contract, purchase agreement, or other documents from the lender deemed necessary to assess the suitability of an applicant's source of funding as required in 16-4-401, MCA.

- (a) A loan agreement may not restrict the movement or transfer of a license.
- (b) Cross collateralization language is unenforceable as it relates to loans securing secured by the liquor license as collateral.
- (c) In the event of default, the lender's rights are protected under 16-4-801, MCA. Upon default exercised, the license must be placed on nonuse status pending transfer to a qualified purchaser or temporary operating authority. The lender is prohibited from leasing the collateral.
- (4) Institutional lenders may secure loans made to a license applicant or licensee with security interests ~~on~~ in assets belonging to the license applicant or licensee. In securing institutional loans with security interests in the assets of a license applicant or licensee, an institutional lender may limit the movement of the assets, including a liquor license.
- (5) remains as proposed.
- (6) ~~An institutional lender may require payment from loan guarantors without initially exhausting all remedies against the borrower under the following conditions~~ A guarantor may make a payment on an institutional loan secured by a license, regardless of whether the institutional lender has exhausted its remedies against the licensee, and such payment will not cause an undisclosed ownership violation for the licensee, only if the following are applicable:
  - (a) the guarantor must be an owner of applicant/licensee, i.e., partner, shareholder, member;
  - (b) the payment is made with the owner/guarantor's own funds or funds borrowed from an institutional source or department-approved noninstitutional source;
  - (c) if the guarantor is not an owner, payment may only be made as a loan to the owners or licensed borrower/entity. Funds used to loan the money for the payment under the guarantee, must be the guarantor's own funds or funds borrowed from an institutional source. The guarantor must first be found by the department to be suitable as a source of credit as part of the application or loan approval process by submitting to the department a personal history statements statement and a complete set of fingerprint cards;
  - (d) ~~as required by the Internal Revenue Code, a licensee having a loan secured by its license, and for which a loan guarantor has made payments on such loan on behalf of the licensee, must annually notify the department within 30 days of the guarantor's payment or on the date on which the licensee's renewal application is due, whichever occurs first, elect to treat whether the payments made under a loan guarantee agreement have been elected to be treated~~ as loans, as paid in capital, or as other equity contributions; and
  - (e) if the guarantor elects to treat the payments as loans to the licensee, the licensee must follow requirements for disclosing noninstitutional lenders; ~~and~~
  - (f) ~~prior department approval is not required on loans to a licensed entity by an approved (licensed) owner of the entity (shareholder, member, partner) under the following conditions:~~
    - (i) ~~the loan is used to meet an obligation of the licensed entity that cannot be met with its existing operating accounts and reserves;~~
    - (ii) ~~the funds loaned to the licensed entity must be those of the owner or funds borrowed from an institutional source;~~



~~(iii) the loan must be memorialized by an agreement between the licensed entity and owner. The loan agreement must meet the department's evaluation standards;~~

~~(iv) the borrower's and lender's financial records must accurately reflect the transaction; and~~

~~(v) failure to maintain adequate records of the transaction or source of funds loaned will be considered a violation of this rule.~~

(7) remains as proposed.

(8) Prior department approval is not required on loans to a licensed entity by an approved (licensed) owner of the entity (shareholder, member, partner) under the following conditions:

(a) the loan is used to meet an obligation of the licensed entity that cannot be met with its existing operating accounts and reserves;

(b) the funds loaned to the licensed entity must be those of the owner or funds borrowed from an institutional source;

(c) the loan must be memorialized by an agreement between the licensed entity and owner. The loan agreement must meet the department's evaluation standards;

(d) the borrower's and lender's financial records must accurately reflect the transaction; and

(e) failure to maintain adequate records of the transaction or source of funds loaned will be considered a violation of this rule.

AUTH: 16-1-303, MCA

IMP: 16-4-401, 16-4-402, 16-4-404, 16-4-801, MCA

4. Therefore, the department adopts New Rule I (ARM 42.12.213) and amends ARM 42.12.206, 42.12.208, 42.12.209, and 42.12.210 as proposed, and amends ARM 42.12.212 as shown above.

5. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. 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 January 31, 2011

## **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<br>Subject | 1. Consult ARM Topical Index.<br>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 September 30, 2010. This table includes those rules adopted during the period October 1, 2010, through December 31, 2010, and any proposed rule action that was pending during the past 6-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 September 30, 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 and 2011 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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