ISSUE NO. 16

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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.

Page Number

TABLE OF CONTENTS

PROPOSAL NOTICE SECTION

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

In the matter of the proposed adoption of New Rules I through III and amendment of ARM 2.43.5002, 2.43.5006, 2.43.5007, and 2.43.5008, all pertaining to the operation of Volunteer Firefighters' Compensation Act administered by the Montana Public Employees' Retirement Board	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 14, 2011, at 9:00 a.m., the Montana Public Employees' Retirement Board (PER Board) will hold a public hearing in the board room at 100 North Park Avenue, Suite 200, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

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 Public Employees' Retirement Board no later than 5:00 p.m. on September 12, 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.

3. The rules as proposed to be adopted provide as follows:

NEW RULE I MEMBERSHIP CARDS (1) Each member must complete a VFCA membership card upon commencing service as a volunteer firefighter, name change, change of statutory beneficiary, or change of fire company/district.

AUTH: 19-17-203, MCA
IMP: 19-17-112, MCA

REASON: Section 11 of Chapter 64 Montana Session Laws of 2011 introduced a requirement for Volunteer Firefighters' Compensation Act (VFCA) members to file membership cards. This rule is necessary to notify members of the events requiring them to complete new membership cards.

NEW RULE II EFFECTIVE DATE FOR PENSION BENEFIT ADJUSTMENTS (1) By October 31 of each year the board shall determine whether the VFCA pension trust fund is actuarially sound and the amortization period for any unfunded liability remains at 20 years or less. As required by 19-17-404, MCA, the board shall

then make pension adjustments for the next 12 months commencing with November benefits.

AUTH: 19-17-203, MCA
IMP: 19-17-404, MCA

REASON: Chapter 195 Montana Session Laws of 2011 amended section 19-17-404, MCA, providing a benefit increase for certain individuals who retire after July 1, 2011. The benefit increase is based on the number of years the individual continued to be a member after completing 30 years of credited service and receipt is contingent each year upon the pension trust fund being actuarially sound and the amortization period for unfunded liabilities remaining at 20 years or less. When the amortization period exceeds 20 years, the increase is not paid. This rule is necessary to clarify the date by which the actuarial determination and benefit adjustment will be made each year and is based upon the earliest administratively feasible date for making the determination and respective adjustments following the close of the fiscal year.

NEW RULE III APPLICATION PROCESS FOR VFCA DISABILITY BENEFITS (1) All forms necessary to apply for disability benefits may be obtained from MPERA.

(2) The following forms must be completed and submitted to MPERA before the board will act on the application for disability benefits:

(a) application for disability benefit and summary of disability;

(b) VFCA duty questionnaire for disability retirement completed by the fire chief;

(c) attending physician's statement, including all medical records required to substantiate a disability claim;

(d) authorization to release information; and

(e) a Health Insurance Portability and Accountability Act (HIPAA) authorization.

(3) The requesting party may provide additional medical information for consideration until 21 days prior to the next scheduled board meeting or, if different, the board meeting at which the request will be considered.

AUTH: 19-17-203, MCA
IMP: 19-17-603, 19-17-604, 19-17-605, MCA

REASON: Chapter 64 Montana Session Laws of 2011 distinguished the benefit amount and eligibility requirements for regular pension benefits from disability benefits. The law amended the section governing eligibility (19-17-401, MCA) and the section governing the amount (19-17-404, MCA) of a regular pension by removing reference to disability in both sections and adopting new sections 25, 26, and 27, respectively providing for the eligibility requirements, amount and time for the commencement of disability benefits. Similarly, the process for applying for disability benefits must be distinguished from the process for applying for regular pension benefits. The existing rule governing the application process for disability

retirement (ARM 2.43.2602) is specific to employees and does not apply to volunteers or the VFCA; thus a new rule is necessary to clarify the process.

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

2.43.5002 FAILURE TO FILE REQUIRED REPORTS (1) ~~In order to receive credit for service under the VFCA, volunteer fire companies must file an "annual certificate" with MPERA. The certification is a report by the fire chief that the members listed on the certificate were active for the full fiscal year and also had the required 30 hours of training. This report is on a fiscal year basis (July through June) and is due by September 1 of each year. The annual certificate is signed by the fire chief and notarized. Annual certificate forms are provided by MPERA.~~

~~(2)~~ Annual certificates filed after the September 1 due date must be appealed to and considered by the board for approval. Information provided to the board by the fire chief or designated official must include:

(a) the original, notarized annual certificate;

(b) certified training documents showing the required 30 hours of training per listed member, including the date, title, description, and hours of all applicable training classes, and the names of all members who attended the specific training classes;

(c) a letter from the fire chief explaining why the annual certificate was not filed timely; and

(d) ~~if requested by the fire chief,~~ a request for oral argument before the board if oral argument is desired.

AUTH: 19-17-203, MCA
IMP: 19-17-108, 19-17-201, 19-17-402, MCA.

REASON: Subsection 1 of this rule is stricken to remove language added to section 19-17-108, MCA by Chapter 64 Montana Session Laws of 2011. As that language is now in statute it should not be repeated in rule. Amendments to subsection 2 are necessary to clarify what information fire companies must submit with late filed certificates. This clarification is intended to avoid reporting problems and to protect the funded status of the VFCA by preventing the possibility of inaccurate or potentially fraudulent claims.

2.43.5006 APPLICATION FOR GROUP INSURANCE PREMIUM PAYMENTS (1) Each volunteer fire company, or organization or agency maintaining supplemental insurance for a fire company, is eligible for payments toward supplemental insurance coverage for active members of the fire company provided the company files ~~by December 31 of~~ each year:

(a) by September 1 a roster for the current fiscal year ~~a completed MPERA-provided application form~~; and

(b) by December 31 proof of insurance and a completed MPERA-provided application form ~~copy of the fire company's active membership list certified by the county clerk as required by 7-33-2311, MCA; and~~

~~(c) proof of insurance~~.

AUTH: 19-17-203, MCA
IMP: 19-17-108, 19-17-201, 19-17-205, MCA

REASON: Chapter 64 Montana Session Laws of 2011 requires eligible fire companies to annually file "rosters" instead of an "active membership list." Amendment to this rule is necessary to reflect the same and distinguish between the dates that rosters, proof of insurance, and applications are due.

2.43.5007 PAYMENTS ~~TO SERVICE PROVIDERS~~ FOR MEDICAL EXPENSES RESULTING FROM DUTY-RELATED INJURIES AND ILLNESSES

(1) Payments for medical expense claims made pursuant to Title 19, chapter 17, part 5, MCA, will be paid ~~directly to medical service providers~~ after:

(a) the claim is properly filed as described in 19-17-502, MCA; and

(b) all personal and/or group insurance payments for those services first have been deducted from the claim.

(2) Medical expense claims in excess of $1,000 must be approved by the board prior to payment by MPERA.

(3) Subsequent insurance settlements in payment of medical expenses which have been previously paid by the board shall be reimbursed to the pension fund within 60 days of receipt by member or service provider.

AUTH: 19-17-203, MCA
IMP: 19-17-504, 19-17-506, MCA

REASON: Amendment is necessary to reflect revision of section 19-17-506, MCA, by Chapter 64 Montana Session Laws of 2011. In addition to providing for payment to be made to a service provider, that statute now allows for payment to be made directly to a claimant if he/she provides documentation of the full payment of medical expenses.

2.43.5008 PAYMENTS ~~TO SERVICE PROVIDERS~~ FOR FUNERAL EXPENSES RESULTING FROM DUTY-RELATED DEATH

(1) Payments for funeral expense claims made pursuant to Title 19, chapter 17, part 5, MCA, will be paid ~~directly to funeral service providers~~ after:

(a) the claim is properly filed as described in 19-17-503, MCA; and

(b) all personal and/or group insurance payments for those services first have been deducted from the claim.

(2) Funeral expense claims in excess of $1,000 must be approved by the board prior to payment by MPERA.

(3) Subsequent insurance settlements in payment of funeral expenses which have been previously paid by the board shall be reimbursed to the pension fund within 60 days of receipt by member or service provider.

AUTH: 19-17-203, MCA
IMP: 19-17-505, 19-17-506, MCA

REASON: Amendment is necessary to reflect revision of 19-17-506, MCA, by Chapter 64 Montana Session Laws of 2011. In addition to providing for payment to be made to a service provider, that statute now allows for payment to be made directly to a claimant if he/she provides documentation of the full payment of funeral expenses.

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: 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., September 23, 2011.

6. Dena Helman, Montana Public Employee Retirement Administration, has been designated to preside over and conduct this hearing.

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 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 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply have been fulfilled. The primary bill sponsor was contacted by telephone, e-mail, and U.S. mail on June 28, 2011.

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

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

Certified to the Secretary of State August 15, 2011.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.36.103, 17.36.106, 17.36.108, 17.36.110, 17.36.116, and 17.36.322 pertaining to application contents, review procedures, compliance with local requirements, certificate of approval, certification of local department or board of health, and sewage systems	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT (SUBDIVISIONS/ON-SITE SUBSURFACE WASTEWATER TREATMENT)

TO: All Concerned Persons

1. On September 14, 2011, at 2:00 p.m., the Department of Environmental Quality will hold a public hearing in Room 35, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The 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, please contact Elois Johnson, Paralegal, no later than 5:00 p.m., September 6, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.36.103 APPLICATION--CONTENTS (1) In addition to the completed application form required by ARM 17.36.102, the following information must be submitted to the reviewing authority as part of a subdivision application:

(a) through (o) remain the same.

(p) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a certification from the local health officer having jurisdiction that the design for non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government;

(p) remains the same, but is renumbered (q).

(r) a copy or a summary of any public comments on preliminary sanitation information collected as provided in 76-3-604(7), MCA;

(q) and (r) remain the same, but are renumbered (s) and (t).

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: In the 2011 session, the Montana Legislature amended 76-4-125, MCA, to require that the department provide an informational notice to subdivision applicants, within five days after receipt of an application, if an application does not contain the following information: (1) a certification from the local health department that non-public systems for water supply and sewage disposal comply with local laws and regulations; (2) if applicable, an approval from local government under the Montana Subdivision and Platting Act, Title 76, chapter 3, MCA (MSPA); and (3) public comments or summaries of comments regarding proposed water and sewer systems, collected under the MSPA as provided in 76-3-604(7)(a), MCA. Section 76-4-125(1)(b), MCA, Chapter 217, Laws of 2011, which was entitled Senate Bill 89 ("Senate Bill 89"). To assist applicants in completing a subdivision application, the proposed amendments to ARM 17.36.103 include two of these three items in the rule setting out the required contents of applications. The third item, local approval under the MSPA, if applicable, is already required by ARM 17.36.103(1)(o).

17.36.106 REVIEW PROCEDURES--APPLICABLE RULES (1) The procedures for review of subdivision applications by the reviewing authority are as follows:

(a) Upon receipt of a subdivision application, a resubmittal, or additional information provided by the applicant, the department will have ~~60~~ 55 days to deny, approve, or conditionally approve the subdivision application. If an environmental impact statement is required, action must be taken within 120 days.

(b) If a local department or board of health has been certified as the reviewing authority pursuant to 76-4-104, MCA, the local reviewing authority shall, within 50 days after receipt of a subdivision application, review the application and forward the application to the department together with a recommended action for approval, conditional approval, or denial. The department shall take final action on the application within ten days after receiving the recommendation of the local reviewing authority, but not later than the time remaining in the ~~60~~ 55-day or 120-day period set out in (1)(a).

(i) If the local reviewing authority recommends denial of an application, the recommendation must be in the form of a denial letter sent to the applicant within ~~50~~ 45 days after receipt of the application. The local reviewing authority shall send a copy of the application and denial letter to the department. A denial letter issued by the local reviewing authority shall constitute the department's final action regarding the denial unless the department finds, pursuant to ARM 17.36.116, that the recommended denial was in error.

(c) If an application is incomplete, the reviewing authority shall deny the application, setting forth, in writing, the deficiencies to the applicant or the applicant's representative. ~~When~~ If the additional information is submitted within 30 days after the date of the denial letter, the reviewing authority shall review ~~such additional information within the timeframes specified in (1)(a) or (b) as applicable~~ the resubmitted application within 30 days after receipt. If the review is conducted by a local department or board of health that is certified under 76-4-104, MCA, the department shall make a final decision on the resubmitted application within ten days after the local reviewing authority completes its review.

(2) Pursuant to 76-4-125(1)(b), MCA, for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, the department shall provide an informational written notice to the applicant, within five working days after receipt of an application, if any of the following items is not submitted with the application:

(a) the certification required by ARM 17.36.108(1)(a);

(b) if applicable, an approval from the local governing body under Title 76, chapter 3, MCA; or

(c) if applicable, public comments or summaries of public comments collected as provided in 76-3-604(7)(a), MCA.

(2) through (2)(e) remain the same, but are renumbered (3) through (3)(e).

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: In the 2011 session, the Montana Legislature amended 76-4-125, MCA, to shorten the department's application review time from 60 to 55 days and to shorten the local reviewing authority's review time from 50 to 45 days. Senate Bill 89. Senate Bill 89 also requires that, if an application is resubmitted within 30 days after the date of the denial letter, review of the resubmitted application must be completed within 30 days after receipt. If a local reviewing authority reviews an application that is timely resubmitted, the department must make a final decision within ten days after the local review is complete. The proposed amendments to ARM 17.36.106(1)(b) are necessary to include the new statutory review periods in the subdivision rules.

Senate Bill 89 also requires the department to provide an informational notice to the applicant, within five days after receipt of an application, if the application does not contain certain information. See Reason statement for amendments to ARM 17.36.103. Proposed new ARM 17.36.106(2) is necessary to implement the statutory five-day notice period.

17.36.108 COMPLIANCE WITH LOCAL REQUIREMENTS (1) The applicant shall provide the department with evidence~~, as set out in (2),~~ as to whether non-public facilities for the supply of water~~,~~ and disposal of wastewater~~, disposal of solid waste, and drainage of storm water~~ are in compliance with applicable laws and regulations of local government. ~~A facility that has an MPDES surface water discharge permit issued pursuant to ARM Title 17, chapter 30, subchapter 13 is exempt from the requirements of this rule.~~

~~(2) The evidence required by (1) must show whether the facilities are in compliance with the laws and regulations of local government relating to water quality, water supply, wastewater disposal, solid waste disposal, and storm water drainage, which are in effect at the time of the submittal of the application to the reviewing authority pursuant to this chapter.~~ The evidence must be in one of the following forms:

(a) for an application that is not subject to review by a local reviewing authority under 76-4-104, MCA, a ~~certificate~~ certification of compliance ~~or a denial letter, in a format approved by the department,~~ that is signed by the local health

officer having jurisdiction. ~~A certificate of compliance may contain conditions of approval~~ The applicant shall submit the certification to the department with the subdivision application; or

(b) ~~if the proposed subdivision is reviewed by the local health officer under authority delegated by the department under Title 76, chapter 4~~ for an application that is subject to review by a local reviewing authority under 76-4-104, MCA, a signed certificate of subdivision approval~~; or~~.

~~(c) a written demonstration by the applicant, in a format approved by the department, that the applicant has requested a certificate of compliance from the local health officer having jurisdiction and the health officer has not issued a denial letter or a certificate of compliance within 50 days of receiving a copy of the application. The department shall presume in such cases that the facilities in the proposed subdivision application are in compliance with the applicable laws and regulations of local government.~~

~~(3) The department shall identify, in its certificate of subdivision approval, all conditions of approval imposed by the local health officer in its review pursuant to this rule. Requirements of the local health officer may not be less stringent than state standards for the control and disposal of sewage promulgated pursuant to 75-5-305(2), MCA.~~

~~(4)~~ (2) As provided in ARM 17.36.110, the department may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with ~~this rule~~ (1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: In the 2011 session, the Montana Legislature amended 76-4-125, MCA, to require the department to provide an informational notice to the applicant, within five days after receipt of an application, if the application does not contain certain information. Senate Bill 89. See Reason for amendments to ARM 17.36.103. One of the application items required by Senate Bill 89 is a certification from the local health department that non-public systems for water supply and sewage disposal comply with local laws and regulations. As described below, the amendments to ARM 17.36.108 are necessary to implement Senate Bill 89 and to make other minor changes to clarify the department's process for determining compliance with local requirements.

Senate Bill 89 amended 76-4-104(6)(j), MCA, to require certification from the local health department that non-public methods of water supply and sewage disposal are in compliance with local regulations. The proposed amendments to ARM 17.36.108(1) and (2) incorporate the term "non-public" in the rule. The proposed amendments also delete the references to local certification of solid waste and storm water facilities, because these facilities are not included in 76-4-104(6)(j), MCA. These amendments are necessary to conform the rule to the applicable statute. The proposed amendments to ARM 17.36.108(1) also remove an

exemption for facilities with Montana Pollutant Discharge Elimination System (MPDES) permits. This amendment is necessary because Senate Bill 89 does not provide for this exemption.

The proposed amendments to ARM 17.36.108(2)(a) and (b) clarify that the form of the local certification depends on whether the local health department has delegated authority under 76-4-104, MCA, to conduct the initial review of subdivision applications. If the local department is a delegated reviewer, the local department's proposed approval of the subdivision application will satisfy the certification requirement. A separate local certification letter is not needed in that case. When the Department of Environmental Quality (DEQ) is the sole reviewing authority, the applicant must provide DEQ with a separate compliance certification letter from the local health department. These amendments are necessary to implement Senate Bill 89.

The proposed amendments delete ARM 17.36.108(2)(c), which allows an applicant to submit an application without a local certification of compliance if the applicant requests certification but the local department fails to respond. In that situation, the rule creates a presumption of compliance with local requirements. Deletion of ARM 17.36.108(2)(c) is necessary to implement Senate Bill 89, which does not provide for a presumption of compliance based on a lack of response from the local health department.

The proposed amendments delete ARM 17.36.108(3), which requires DEQ to include in its certificate of subdivision approval (COSA) any "conditions of approval" identified by the local health department. Pursuant to 76-4-104(6)(j), MCA, DEQ has authority to deny a subdivision application if the subdivision does not comply with local laws and regulations applicable to non-public water supply and sewage disposal. However, DEQ lacks authority under the Sanitation Act to enforce other local "conditions of approval." Deletion of ARM 17.36.108(3) is necessary to avoid placing conditions in a COSA that DEQ lacks authority to enforce.

17.36.110 CERTIFICATE OF APPROVAL (1) Subject to the local certification requirements set out in (2) ~~and (3)~~, the reviewing authority shall issue a certificate of subdivision approval if:

(a) through (c)(v) remain the same.

(2) The reviewing authority may not issue a certificate of subdivision approval if non-public facilities for water supply or for the disposal of wastewater are proposed, unless the applicant has submitted evidence, in accordance with ARM 17.36.108(1), that the design for the non-public water supply and wastewater disposal facilities complies with applicable laws and regulations of local government.

~~(3) The reviewing authority shall identify, in its certificate of subdivision approval, all conditions of approval imposed by the local health officer in its review pursuant to ARM 17.36.108. Requirements of the local health officer may not be less stringent than state standards for the control and disposal of sewage promulgated pursuant to 75-5-305(2), MCA.~~

(4) through (4)(b) remain the same, but are renumbered (3) through (3)(b).

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: The proposed amendments would delete ARM 17.36.110(3), which requires DEQ to include in its certificate of subdivision approval (COSA) any "conditions of approval" identified by the local health department. Deletion of ARM 17.36.108(3) is necessary to avoid placing conditions in a COSA that DEQ lacks authority to enforce. See Reason statement for amendments to ARM 17.36.108.

17.36.116 CERTIFICATION OF LOCAL DEPARTMENT OR BOARD OF HEALTH (1) through (2)(b) remain the same.

(3) The department's oversight of a certified local reviewing authority's review of subdivision applications shall be limited to the following:

(a) within the ~~60~~ 55-day review period, the department shall determine, by reference to the local reviewing authority's review checklist or by other means, whether the local reviewer has conducted a completeness review of the application and whether the local reviewer has completed a compliance review of all systems designated by the contract between the department and the local reviewing authority. If the department determines that either of these tasks was not completed, the department may return the application to the local reviewing authority for further review or may itself complete the review;

(b) within the ~~60~~ 55-day review period, the department may check the accuracy of the local reviewing authority's review of subdivision applications. The department's accuracy checks must be limited to 10% of the applications submitted to the department by the local reviewing authority, except that the department may also review an application:

(i) through (c) remain the same.

(d) in addition to, or instead of, examining locally reviewed applications during the ~~60~~ 55-day review period, the department may conduct an annual audit of a representative sample of locally reviewed applications.

(4) remains the same.

AUTH: 76-4-104, MCA
IMP: 76-4-104, 76-4-125, MCA

REASON: In the 2011 session, the Montana Legislature amended 76-4-125, MCA, to shorten the department's application review time from 60 to 55 days and shorten the local reviewing authority's review time from 50 to 45 days. The proposed amendments to ARM 17.36.116 are necessary to include the new statutory review periods in the subdivision rules. See Reason statement for amendments to ARM 17.36.106.

17.36.322 SEWAGE SYSTEMS: SITING (1) through (3) remain the same.

(4) Pursuant to 76-4-104(6)(i), MCA, a proposed drainfield mixing zone must be located wholly within the proposed subdivision where the drainfield is to be located unless an easement or, for public land, other authorization is obtained from the landowner to place the proposed mixing zone outside the boundaries of the proposed subdivision. A mixing zone may extend outside the boundaries of the proposed subdivision onto adjoining land that is dedicated for use as a right-of-way

for roads, railroads, or utilities. This section does not apply to the divisions provided for in 76-3-207, MCA, except those under 76-3-207(1)(b), MCA.

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

AUTH: 76-4-104, MCA
IMP: 76-4-104, MCA

REASON: In the 2011 session, the Montana Legislature amended 76-4-104, MCA, to require that proposed drainfield mixing zones in proposed subdivisions be located wholly within the subdivision unless an easement or other authorization is obtained. An exception is provided if the adjoining land is dedicated for use as a right-of-way for roads, railroads, or utilities. HB 28 (2011). The proposed amendment to ARM 17.36.322 implements HB 28 by referencing the statutory requirements in the department's subdivision rule that sets out siting restrictions for sewage systems. The amendment to ARM 17.36.322 is necessary to implement HB 28 and to ensure that the department subdivision rules inform applicants of applicable restrictions for siting sewage systems.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., September 22, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. James Madden, attorney, has been designated to preside over and conduct the hearing.

7. 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 and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. 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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified on June 10, 2011, by regular mail.

Reviewed by: DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ James M. Madden BY: */s/ Richard H. Opper*
JAMES M. MADDEN RICHARD H. OPPER, Director
Rule Reviewer

Certified to the Secretary of State, August 15, 2011.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.15.306, concerning mental health therapists	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 26, 2011, the Department of Justice proposes to amend the above-stated rule.

2. The department 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 no later than 5:00 p.m. on September 1, 2011, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

23.15.306 MENTAL HEALTH THERAPISTS (1) through (4)(a) remain the same.

(i) the spouse, parent, child, or sibling of a victim who is killed as a result of criminally injurious conduct; ~~and~~

(ii) the parent or sibling of a minor who is a victim of criminally injurious conduct involving a sexual offense, provided the parent or sibling is not entitled to receive services under Title 41, chapter 3, MCA~~.~~; and

(iii) a minor child present in a home where domestic violence occurred.

(b) through (5) remain the same.

AUTH: 53-9-104, MCA
IMP: 53-9-103, 53-9-128, MCA

RATIONALE AND JUSTIFICATION: This amendment is necessary to implement the legislative changes to 53-9-103 and 53-9-128, MCA, and to ensure that those children who are secondary victims of domestic violence, by virtue of witnessing the domestic violence in the home, have their mental health costs covered in a like manner to the other secondary victims listed in ARM 23.15.306.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Stuart Segrest, Department of Justice, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than 5:00 p.m. on September 22, 2011.

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 they have to Stuart Segrest at the above address no later than September 22, 2011.

6. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are 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. The number of persons affected is at least 25.

7. An electronic copy of this notice is available at our web site at http://doj.mt.gov/resources/administrativerules.asp. The department strives to make the electronic copy 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 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 a person's difficulties in sending an e-mail do not excuse late submission of comments.

8. 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 contact person in 4 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested person's request form may be printed from the Department of Justice's web site at http://doj.mt.gov/resources/administrativerules.asp, and mailed to the rule reviewer.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply, and the sponsor was notified on August 8, 2011 by e-mail.

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

/s/ Stuart Segrest
STUART SEGREST
Rule Reviewer

Certified to the Secretary of State on August 15, 2011.

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

In the matter of the amendment of ARM 24.141.405 fee schedule and the adoption of NEW RULE I nonroutine applications	))))	AMENDED NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On July 28, 2011, the Montana State Electrical Board (board) published MAR Notice no. 24-141-35 regarding the public hearing on the proposed amendment and adoption of the above-state rules, at page 1347 of the 2011 Montana Administrative Register, issue no. 14. A public hearing was scheduled and announced in the notice.

2. It was subsequently discovered that an error had occurred and the proposal notice had not been sent to all interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice and has rescheduled the public hearing as shown below.

3. On September 23, 2011, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

4. 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 State Electrical Board no later than 5:00 p.m., on September 16, 2011, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdele@mt.gov.

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

24.141.405 FEE SCHEDULE (1) through (4) remain the same.

(a) Contractor	~~200~~ 275
(b) Master	~~100~~ 135
(c) Journeyman	~~100~~ 135
(d) Residential	~~100~~ 135

(5) through (11) remain the same.

AUTH: 37-1-134, 37-68-201, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-68-304, 37-68-310, 37-68-311, 37-68-312, 37-68-313, MCA

REASON: The board has determined it is reasonably necessary to increase renewal fees to comply with 37-1-134, MCA, and keep the board's fees commensurate with associated costs. In 2009, the board raised fees by just one-half of the amount of increase recommended by the department. In providing administrative services to the board, the department has now determined that unless the renewal fees are increased as proposed, the board will have a shortage of operating funds by November 2011. The board estimates that the proposed fee increases will affect 2,109 licensees and result in approximately $90,495 in additional annual revenue.

6. The proposed new rule provides as follows:

NEW RULE I NONROUTINE APPLICATIONS (1) Applications for initial licensure or renewal that disclose any of the following circumstances are nonroutine and must be reviewed and approved by the board before the license may be issued or renewed:

(a) the applicant's electrician's license was disciplined or the application for an electrician's license was denied in another state or jurisdiction;

(b) the applicant has been convicted of a felony for which the applicant is currently on probation or is otherwise under supervision;

(c) the applicant has been convicted of any of the following felonies committed within the past five years, regardless of whether the applicant is currently on probation:

(i) property crimes including, but not limited to, theft or burglary; or

(ii) crimes of violence including, but not limited to, assault or rape.

(2) For purposes of this rule, any judgment in a criminal case other than acquittal will be deemed a "conviction" for purposes of this rule, without regard to the nature of the plea or whether the applicant received a suspended or deferred sentence.

AUTH: 37-1-131, 37-68-201, MCA
IMP: 37-1-101, 37-68-201, 37-68-311, MCA

REASON: Section 37-1-101, MCA, specifies that the department is responsible for receipt and processing of routine license applications for all boards administratively attached to the department. Because the board meets only quarterly, having the board review all applications containing some type of irregularity has caused unnecessary delays in issuing licenses. The board concluded that with the guidance provided in this new rule, the board's current rules, and in Title 37, chapter 68, MCA, department staff will be able to competently process more electrician applications and issue the licenses and renewals without additional board review.

7. 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 State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdele@mt.gov, and must be received no later than 5:00 p.m., October 3, 2011.

8. 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.electrician.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.

9. 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 State Electrical Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdele@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

STATE ELECTRICAL BOARD
JACK FISHER, PRESIDENT

/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 15, 2011

BEFORE THE BOARD OF MEDICAL EXAMINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.156.1401, 24.156.1403, 24.156.1404, 24.156.1406, and 24.156.1412 acupuncturist licensure and unprofessional conduct, 24.156.1622 and 24.156.1623 physician assistant supervision and chart review, the adoption of New Rules I through V acupuncturist discipline reporting and continuing education, and New Rule VI physician assistant performing radiologic procedures, and the repeal of 24.156.1405 acupuncture school approval	)))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On September 27, 2011, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal 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 Medical Examiners no later than 5:00 p.m., on September 23, 2011, to advise us of the nature of the accommodation that you need. Please contact Maggie Connor, Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2303; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdmed@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Following a review of the acupuncture rules, the board is proposing several revisions and one repeal of existing rules in subchapter 14. Some of the amendments are technical in nature, such as renumbering or correcting punctuation or spelling within rules, or to comply with ARM formatting requirements. Other changes update rules with current acupuncture examination, accreditation, and continuing education entities; delete erroneous citations or rule sections that are clearly addressed in statute; reorganize and relocate rule sections for accuracy, consistency, simplicity, and ease of use; and amend rule text or catchphrases for correctness.

The board's acupuncturist subcommittee, comprised of both board members and non-board representatives, met several times and recommended rule

amendments and the adoption of New Rules I through V in this notice. The amendments clearly set forth current board licensure requirements and procedures; relocate provisions within the rules for clarity and ease of use; and streamline and simplify existing rules to align with current board processes. New Rule I establishes the obligation to report licensee discipline and impairment to the board for acupuncturists to be consistent with requirements for all professionals licensed by the board. The committee also determined it is important for public safety for licensed acupuncturists to keep current with developments both within the profession and across related professional boundaries. The board is proposing New Rules II through V to establish continuing education requirements for licensed acupuncturists, and to clearly set forth the processes for course approval and the reporting and auditing for compliance with these requirements.

Accordingly, the board has determined that reasonable necessity exists to amend certain acupuncture rules and adopt new 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, delete references to repealed statutes, and 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:

24.156.1401 DEFINITIONS (1) ~~The term "gross malpractice" as used in 37-3-311, MCA, includes, but is not limited to, the following:~~ "Examinations" means the examinations required for certification in acupuncture as granted by the National Commission for the Certification of Acupuncture and Oriental Medicine, or its successor.

~~(a) failure to utilize sterile needle technique, as articulated by the National Commission for the Certification of Acupuncturists, or its successor~~

(2) "National Commission for the Certification of Acupuncture and Oriental Medicine" is the organization known before 1997 as the National Commission for the Certification of Acupuncturists.

(3) "Council of Colleges for Acupuncture and Oriental Medicine" means the organization responsible for administering the clean needle technique examination.

(4) "Accreditation Commission for Acupuncture and Oriental Medicine" is the organization known before 1997 as the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine.

AUTH: 37-1-131, 37-13-201, MCA
IMP: 37-13-201, 37-13-302, ~~37-13-311, 37-13-312,~~ MCA

24.156.1403 REQUIREMENTS FOR LICENSURE (1) Applicants for licensure must meet the ~~requirements~~ prerequisites for and pass the ~~examination prepared and administered~~ examinations required for certification in acupuncture by the National Commission for the Certification of ~~Acupuncturists~~ Acupuncture and Oriental Medicine, or its successor.

(2) Applicants for licensure must pass ~~all three components of~~ the examination in ~~sterile~~ clean needle technique administered by the ~~National Commission for the Certification of Acupuncturists~~ Council of Colleges for Acupuncture and Oriental Medicine, or its successor.

AUTH: 37-13-201, MCA
IMP: 37-13-201, MCA

24.156.1404 APPLICATION FOR LICENSURE (1) ~~All applications shall be made on a printed form provided by the board and no application made otherwise will be accepted. Each applicant must provide the names of three references who are knowledgeable as to the applicant's moral character and competence as an acupuncturist. Each application shall be accompanied by a recent photograph of the applicant which has been signed by the applicant and dated as to when taken. Each applicant shall submit a sworn affidavit that he is reasonably able to communicate verbally and in writing in the English language.~~ An applicant for an acupuncture license shall submit an application on a form prescribed by the department. The application must be complete and accompanied by the appropriate fees and the following information and/or documentation:

(a) applicant's current original unopened National Practitioner Data Bank (NPDB) self-query report;

(b) applicant's official transcript from a school accredited by the Accreditation Commission for Acupuncture and Oriental Medicine;

(c) three written character references, two of which are licensed acupuncturists;

(d) applicant's clean needle and examination results provided by the National Commission for the Certification of Acupuncture and Oriental Medicine;

(e) recent photograph of the applicant which has been signed by the applicant and dated as to when taken;

(f) copy of birth certificate or driver's license; and

(g) copy of DD214 military discharge, if applicable.

(2) Applicants licensed in another state or jurisdiction shall cause all states and jurisdictions in which the applicant holds or has ever held a license to submit a current verification of licensure directly to the board on behalf of the applicant.

(3) Applicants whose applications are received, processed, and determined to be incomplete will be sent a letter from the board office specifying the deficiencies which may include, but not be limited to, appropriate fees, verifications, character references, and any other supplemental information the board or its designee deems appropriate. An incomplete application will be held for a period of one year at which time the application will be treated as an expired application and all fees will be forfeited. The applicant may correct any deficiencies and submit missing or additionally requested information or documentation necessary to complete the application within one year from the date the initial application is received in the board office.

(4) The applicant may voluntarily withdraw the application prior to the one-year deadline set forth in (3) by submitting a request for withdrawal in writing to the board office. All application fees submitted will be forfeited.

(5) After withdrawal of an application, the applicant will be required to submit a new application, including supporting documentation and appropriate fees, to begin the licensing and verification process again.

(6) Completed applications shall be reviewed by the board or its designee, which may request such additional information or clarification of information provided in the application as deemed reasonably necessary.

AUTH: 37-13-201, MCA
IMP: 37-13-302, MCA

24.156.1406 CURRICULUM ~~APPROVAL~~ (1) ~~Subsection 37-13-302(2)(c), MCA, means that the applicant for licensure as an acupuncturist must establish one of the following:~~ The board will review any equivalent curriculum as provided for in 37-13-302, MCA, on an individual basis, using acceptable curriculum existing at the time of the individual's study as a guide for evaluation.

~~(a) that the applicant has graduated from a school approved by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM) and that the school offers a curriculum of at least 1000 hours of entry-level training in recognized branches of acupuncture; or~~

~~(b) that the applicant has attended a school which, although the school may not be approved by NACSCAOM, offers a curriculum which is the equivalent of a 1000 hour course of entry-level training in recognized branches of acupuncture, and thereby merits the board's approval as a basis for licensure.~~

AUTH: ~~This rule is advisory only, but may be a correct interpretation of law, 37-13-102,~~ 37-13-201, MCA
IMP: 37-13-301, 37-13-302, 37-13-304, MCA

REASON: The board is deleting (1)(a) and (b) as the information is already set forth in statute at 37-13-302, MCA. These changes, and the removal of the advisory notation in the authority cites, follow a determination that the board is allowed, in law, to review and approve equivalent curriculum and is not allowed to approve schools not approved by National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM), or after 1997 the Accreditation Commission for Acupuncture and Oriental Medicine (ACAOM).

24.156.1412 UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 13, MCA:

~~(1) Commission of an act of sexual abuse, misconduct or exploitation. Each of the following acts constitutes sexual abuse, misconduct or exploitation, even where the patient is perceived as seductive:~~

(a) ~~physical or verbal sexual contact or intercourse during the course of the professional relationship, whether in or out of the practitioner's place of business~~ Failure to maintain professional boundaries in relationships with patients, or in any way exploiting the practitioner/patient trust;

(b) ~~failure to maintain appropriate boundaries~~ Engaging in sexual contact with a current patient if the contact commences after the practitioner/patient relationship is established;

(c) ~~failure to provide the patient with an opportunity to undress and dress in private~~ Engaging in sexual contact with a former patient, unless a reasonable period of time has elapsed since the professional relationship ended and unless the sexual contact does not exploit the trust established during the professional relationship;

~~(d) failure to provide the patient with the opportunity to wear underwear or a patient gown during treatment;~~

~~(e) failure to fully drape all parts of the patient's body except that being treated; failure to obtain informed verbal consent before undraping or treating the patient's breasts, buttocks, abdomen or genitals;~~

~~(f) use of inappropriate parts of the practitioner's body to brace the patient;~~

~~(g) palpation by other than the practitioner's hands; palpation beyond that which is necessary to accomplish a competent examination or treatment;~~

~~(h) sexual repartee, innuendo, jokes or flirtation;~~

~~(i) sexual comments about the patient's person or clothing;~~

~~(j) inquiry into the patient's sexual history or behavior beyond that which is necessary for a competent examination, diagnosis or treatment. The practitioner shall not be unnecessarily intrusive; the practitioner shall not verbalize any value judgment concerning the patient's sexual history or behavior;~~

~~(k) attempting to diagnose or treat a sexual issue beyond the practitioner's scope of training or practice;~~

~~(l) failure to refer a case of suspected sexual abuse for more specialized professional help;~~

~~(2) Failure to obtain informed consent for treatment. In order to obtain informed consent, the practitioner must give the patient at least:~~

~~(a) a description of the proposed treatment, including:~~

~~(i) the body part to be treated,~~

~~(ii) the type of treatment,~~

~~(iii) the possible sensations the patient might feel,~~

~~(iv) the duration of treatment, and~~

~~(v) the possible outcome of the treatment;~~

~~(b) the practitioner's reason or rationale for the treatment proposed;~~

~~(c) the choice to accept or reject the proposed treatment, or any part of it, before or during the treatment.~~

~~(3) Failure to maintain appropriate patient charts in the English language;~~

~~(4)~~ (d) Failure to utilize ~~sterile~~ clean needle technique, as ~~articulated~~ required by the National Commission for the Certification of ~~Acupuncturists~~ Acupuncture and Oriental Medicine, or its successor;

~~(5) Conviction, including conviction following a plea of nolo contendere, of an offense involving moral turpitude, whether misdemeanor or felony, and whether or not an appeal is pending;~~

~~(6) Fraud, misrepresentation, deception or concealment of a material fact in applying for or securing a license, or license renewal, or in taking an examination required for licensure; as used herein, "material" means any false or misleading statement or information;~~

(7) through (12) remain the same, but are renumbered (e) through (j).

~~(13) Habitual intemperance or excessive use of an addictive drug, alcohol or any other substance to the extent that the use impairs the user physically or mentally;~~

(14) and (15) remain the same, but are renumbered (k) and (l).

~~(16) Failing to report to the board any adverse judgment, settlement or award arising from an acupuncture liability claim or other unprofessional conduct;~~

(17) through (20) remain the same, but are renumbered (m) through (p).

~~(21)~~ (q) Except as provided in this subsection, practicing acupuncture as the partner, agent or employee of, or in joint venture with, a person who does not hold a license to practice acupuncture within this state; however, this does not prohibit:

~~(a)~~ (i) the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, MCA;

~~(b)~~ (ii) the organization of a professional limited liability company under Title 35, chapter 8, MCA, for the providing of professional services as defined in Title 35, chapter 8, MCA;

~~(c)~~ (iii) practicing acupuncture as the partner, agent or employee of, or in joint venture with, a hospital, medical assistance facility or other licensed health care provider; however,

~~(i)~~ (A) the partnership, agency, employment or joint venture must be evidenced by a written agreement containing language to the effect that the relationship created by the agreement may not affect the exercise of the acupuncturist's independent judgment in the practice of acupuncture;

~~(ii)~~ (B) the acupuncturist's independent judgment in the practice of acupuncture must in fact be unaffected by the relationship; and

~~(iii)~~ (C) the acupuncturist may not be required to refer any patient to a particular provider or supplier or take any other action that the acupuncturist determines not to be in the patient's best interest;

(22) remains the same but is renumbered (r).

(s) Misrepresenting professional credentials (i.e. education, training, experience, level of competence, skills, and/or certification status);

(t) Engaging in conduct that demonstrates a lack of knowledge of, or lack of ability in, or failure to apply the prevailing principles and/or skills of the profession in which the individual has been certified; and

(23) remains the same, but is renumbered (u).

AUTH: 37-1-134, 37-1-136, 37-1-319, 37-13-201, MCA
IMP: 37-1-308, 37-1-309, 37-1-310, 37-1-311, 37-1-312, 37-1-316, 37-1-319, 37-13-201, ~~37-13-311, 37-13-312,~~ MCA

REASON: Following recommendations by the acupuncturists subcommittee, the board is simplifying and streamlining this rule by deleting conduct already addressed in department statute and by eliminating redundant and excessively detailed descriptions of conduct relating to sexual contact and informed consent.

24.156.1622 SUPERVISION OF PHYSICIAN ASSISTANT (1) and (1)(a) remain the same.

(b) ~~on-site~~ onsite supervision; or

(c) remains the same.

(2) The supervising physician shall consider the location, nature, and setting of the practice and the experience of the physician assistant when entering into a new supervision agreement and a duties and delegation agreement to assure the safety and quality of physician assistant services.

(2) and (3) remain the same, but are renumbered (3) and (4).

(5) The supervision agreement and delegation and duties agreement for nonroutine applicants must assure the safety and quality of physician assistant services, considering the location, nature, and setting of the practice and the experience of the physician assistant, and shall provide for:

(a) an appropriate type or combination of types of supervision identified in (1), including specific supervising physician response and availability times;

(b) an appropriate scope of delegation of practice authority and appropriate limitations upon the practice authority of the physician assistant;

(c) appropriate frequency and duration of face-to-face meetings; and

(d) an appropriate percentage of physician assistant charts that must be reviewed by the supervising physician.

(6) The supervision agreement and delegation and duties agreement for nonroutine applicants may provide for periodic changes in the type of supervision, scope of delegation, practice limitations, frequency, and duration of face-to-face meetings, and percentage of charts reviewed, based upon the duration and nature of experience gained by the physician assistant, the supervising physician's written assessment and evaluation of the physician assistant's experience and judgment, and other factors relevant to the nature and degree of supervision appropriate to assure the safety and quality of physician assistant services.

(7) A supervising physician and physician assistant must submit the proposed supervision agreement and delegation and duties agreement to the board for approval, and as a condition of approval, must demonstrate to the board:

(a) that the supervision agreement and delegation and duties agreement comply with this rule and all other applicable requirements; and

(b) that the supervising physician and physician assistant have a complete and functional understanding of their respective responsibilities under the agreements and applicable laws and rules.

(8) A physician assistant may not practice as a physician assistant in this state prior to board approval of the supervision agreement and delegation and duties agreement.

AUTH: 37-1-131, 37-20-202, MCA
IMP: 37-20-101, 37-20-301, 37-20-403, MCA

REASON: The board is amending this rule to clarify for licensed physician assistants and supervising physicians that proposed supervision agreements must be written with consideration of the experience level of the physician assistant and the environment in which the physician assistant will practice. The board determined the need for clarification based on regular reviews of supervision agreements and interviews with newly licensed physician assistants and/or

physicians new to the task of providing supervision to physician assistants. The board acknowledges the extreme pressures placed on physician assistants in frontier locations, and especially on new graduates, where they often perform professional services without other health care providers available to assist them. The board concluded these amendments are necessary to further the board's duty to protect the public.

The board considered the various practices that physician assistants might engage in when employed in urban areas, versus rural and frontier practices, or when a physician assistant works in an isolated setting after being in a group practice. The board considered times when a physician assistant, previously supervised by a physician in a certain specialty practice, switches supervising physicians or changes the physician assistant's specialty to align with the new supervisor's specialty. Following consideration of these various potential practice situations, the board determined it is necessary to amend this rule and review both the supervision agreement and the delegation and duties agreement to ensure an appropriate level of supervision and delegation of duties.

24.156.1623 CHART REVIEW (1) and (2) remain the same.

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

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

(5) A supervising physician shall not be deemed out of compliance with the chart review percentage requirements of this section if the supervising physician demonstrates review of at least 95 percent of the required number of chart reviews.

AUTH: 37-1-131, 37-20-202, MCA
IMP: 37-20-101, 37-20-301, MCA

REASON: Following the review and for the reasons described for amendments to ARM 24.156.1622 above, the board is amending this rule to clarify when a supervising physician would be in noncompliance for not conducting chart reviews at the appropriate level.

5. The proposed new rules provide as follows:

NEW RULE I OBLIGATION TO REPORT TO THE BOARD (1) Within three months from the date of a final judgment, final order, or final disciplinary action, an acupuncturist licensed under this chapter shall report to the board all information related to the malpractice, misconduct, criminal, or disciplinary action in which the acupuncturist is a named party.

(2) An acupuncturist with suspected or known impairment shall self-report to the board. In lieu of reporting to the board, the acupuncturist may self-report to the board-endorsed professional assistance program.

(3) An acupuncturist is obligated to report suspected or known impairment of other health care providers to the appropriate licensing board, agency, or in lieu of the board or agency, may report to the endorsed professional assistance program.

AUTH: 37-1-131, 37-13-201, MCA
IMP: 37-1-131, MCA

NEW RULE II CONTINUING EDUCATION FOR ACUPUNCTURISTS (1) Each acupuncture licensee of the Board of Medical Examiners shall earn 15 clock hours of accredited continuing acupuncture education each year. Clock hours or contact hours shall be the actual number of hours during which instruction was given.

(2) A maximum of eight clock hours may be given for the first-time preparation of a new course, in-service training workshop, or seminar which is related to the enhancement of acupuncture practice, values, skills, and knowledge; or a maximum of eight clock hours credit may be given for the preparation by the author or authors of a professional acupuncture paper published for the first time in a recognized professional journal; or given for the first time at a statewide or national professional meeting.

(3) If a licensee completes more than 15 hours of continuing education in a year, excess hours in an amount not to exceed 15 hours may be carried forward to the next year.

(4) Any licensee may apply for a hardship exemption from the continuing acupuncture education requirements of these rules by filing a statement with the board setting forth good faith reasons why he or she is unable to comply with these rules and an exemption may be granted by the board.

(5) Acupuncture applicants licensed after May 1 are required to obtain one-half of the 15-hour requirement; and those licensed after August 1, will not be required to obtain continuing education credits for renewal. Acupuncture applicants licensed between November 1 and April 30 are required to meet the 15-hour requirement.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA
IMP: 37-1-131, 37-1-306, 37-13-201, MCA

NEW RULE III ACCREDITATION, APPROVAL, AND STANDARDS (1) The board shall appoint a continuing education review committee which shall assist the board in approving courses, papers, workshops, and other activities designed to meet the continuing education requirements of licensed acupuncturists.

(2) The continuing education review committee shall approve continuing acupuncture education courses, papers, workshops, and other activities that meet the following standards:

(a) They shall have significant intellectual or practical content, and the primary objective shall be to increase the participant's professional competence as an acupuncturist.

(b) They shall constitute an organized program of learning dealing with matters directly related to the practice of acupuncture, professional responsibility, or ethical obligations of acupuncturists.

(c) Providers of continuing acupuncture education and authors of published papers shall apply to the board for course or publication approval by submitting an application on a form prescribed by the department. The application must be complete and accompanied by the appropriate documents.

(d) Applicants shall demonstrate that the offered course complies with the standards.

(e) The board, in its discretion, may determine the number of hours acceptable for any continuing education credit.

(f) Courses accredited by the National Commission for the Certification of Acupuncture and Oriental Medicine shall be preapproved by the board.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA
IMP: 37-1-131, 37-1-306, 37-13-201, MCA

NEW RULE IV REPORTING REQUIREMENTS (1) Each licensee shall maintain a record of courses attended on a form approved by the board, attesting to the number of accredited continuing education hours completed each year.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA
IMP: 37-1-131, 37-1-306, 37-13-201, MCA

NEW RULE V CONTINUING EDUCATION AUDIT (1) The board shall conduct a random audit of continuing education following each renewal period.

(2) Licensees selected for the audit shall submit documentation as required in Rule Reporting Requirements that attests to completion of the continuing education hours.

(3) Failure to comply with continuing education requirements may be grounds for discipline.

AUTH: 37-1-131, 37-1-319, 37-13-201, MCA
IMP: 37-1-131, 37-1-306, 37-13-201, MCA

NEW RULE VI PHYSICIAN ASSISTANT PERFORMING RADIOLOGIC PROCEDURES – ROUTINE AND ADVANCED PROCEDURES (1) A physician assistant performing routine radiologic procedures must maintain an active limited technologist permit issued by the Montana Board of Radiologic Technologists or provide proof to the board that he or she has completed the United States Army MOS-68P radiologic training course, or a course equivalent to that required for a limited technologist permit. The board shall verify completion of a course different from but equivalent to that required for a limited technologist permit and document, in board minutes, acceptance of such course completion before a physician assistant may perform routine radiological procedures.

(2) A physician assistant performing routine radiologic procedures who holds a limited technologist permit or whose education has been accepted by the board as equivalent to that of a limited technologist permit holder may not perform procedures that exceed the scope of practice of a limited technologist permit holder. Routine radiologic procedures within the scope of practice of a limited technologist permit holder are set forth in rule and adopted by the Montana Board of Radiologic Technologists.

(3) A physician assistant performing fluoroscopy or advanced radiologic procedures must meet the education requirements established by the Board of Radiologic Technologists for a Radiology Practitioner Assistant license. The board shall verify completion of such educational requirements and document acceptance of such educational requirements in board minutes.

(4) A physician assistant performing advanced radiologic procedures may not perform radiologic procedures that exceed the scope of practice of a radiologic practitioner assistant as set forth in rule by the Montana Board of Radiologic Technologists.

AUTH: 37-1-131, 37-20-202, MCA
IMP: 37-1-131, 37-20-101, 37-20-403, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule VI and clarify for licensed physician assistants and supervising physicians the additional training and permit or licensure requirements necessary for physician assistants to perform routine and advanced radiologic procedures. The Board of Radiologic Technologists brought concerns to the board regarding physician assistants performing x-ray procedures in clinics with minimal instruction or training. The board determined public health and safety is best protected through the assurance that a physician assistant has acquired proper training and is capable of performing high-quality x-ray procedures. The Board of Radiologic Technologists has the statutory authority to issue radiologic technologist licenses or limited technologist permits and is the proper licensing board for setting the educational levels and training needed to qualify for a license or permit.

6. The rule proposed to be repealed is as follows:

24.156.1405 APPROVAL OF SCHOOLS found at ARM page 24-15282.

AUTH: 37-13-201, MCA
IMP: 37-13-302, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as (1) unnecessarily repeats statutory language in 37-13-302, MCA, and (2) is being moved to ARM 24.156.1406 within this notice.

7. 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 Medical Examiners, 301 South Park Avenue, P.O. Box

200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdmed@mt.gov, and must be received no later than 5:00 p.m., October 5, 2011.

8. 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.medicalboard.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.

9. 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 Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdmed@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF MEDICAL EXAMINERS
ANNA EARL, MD, CHAIRPERSON

/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 15, 2011

BEFORE THE BOARD OF PRIVATE SECURITY PATROL OFFICERS
AND INVESTIGATORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.182.401 fee schedule and the adoption of NEW RULES I through V training courses standards and curriculum	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 19, 2011, at 2:00 p.m., a public hearing will be held in room B-07, 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 Private Security Patrol Officers and Investigators (board) no later than 5:00 p.m., on September 14, 2011, to advise us of the nature of the accommodation that you need. Please contact Susan Wevley, Board of Private Security Patrol Officers and Investigators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2348; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdpsp@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonably necessary to adopt New Rules I through V to further implement the statutory directives of 37-60-202, MCA, by adopting rules for the certification of training programs for private investigator, private security guard, security alarm installer, and alarm response runner licensure categories. Additionally, 37-60-303, MCA, requires an applicant for licensure as a private security guard, security alarm installer, or alarm response runner to complete the requirements of a training program, certified by the board, and provide written notice of satisfactory completion of the training.

The board has concluded that the training program standards proposed in each licensure category constitute the minimum training requirements that are necessary to protect the public health, safety, and welfare, in an amount of time and area of study that appear to be generally consistent with training programs offered by law enforcement jurisdictions, other state licensing jurisdictions, and private associations.

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

24.182.401 FEE SCHEDULE (1) and (1)(a) remain the same.

(i) Company	$~~225~~ 250
(ii) Resident manager	~~150~~ 175
(iii) Security guard, alarm installer, or alarm response runner	~~75~~ 100
(iv) Branch office	~~75~~ 100
(b) Private investigator	~~225~~ 250
(c) Private investigator trainee	~~125~~ 150
(d) Process server	~~75~~ 100
(e) Certified firearms instructor	~~125~~ 150
(f) Armed endorsement	~~30~~ 50

(2) and (2)(a) remain the same.

(i) Company	~~175~~ 200
(ii) Resident manager	~~100~~ 125
(iii) Security guard, alarm installer, or alarm response runner	~~75~~ 100
(iv) Branch office	~~75~~ 100
(b) Private investigator	~~150~~ 175
(c) Private investigator trainee	~~75~~ 100
(d) Process server	~~75~~ 100
(e) Certified firearms instructor	~~100~~ 125
(f) Armed endorsement	~~30~~ 50

(3) remains the same.

(a) Photo ID card (original lost or destroyed)	~~10~~ 20

(b) remains the same.

(c) Changes of employer~~, supervisor, address,~~ or name	~~10~~ 20
(d) Changes of supervisor or address	10

(d) remains the same, but is renumbered (e).

(4) through (7) remain the same.

AUTH: 37-1-134, 37-60-202, MCA
IMP: 25-1-1104, 37-1-134, 37-1-141, 37-60-202, 37-60-304, MCA

REASON: The board determined it is reasonably necessary to increase the board's fees as proposed to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with associated program costs. The department, in providing administrative services to the board, has determined that unless the licensure fees are increased as proposed, the board will have a shortage of operating funds by the 2012 licensure renewal period. The board ended fiscal year 2011 with a negative cash balance of -$40,270. The board estimates that approximately 2,365 people will be affected by the proposed fee changes and that the changes will generate $56,205 in annual board revenue.

The board is amending (3)(c) and (d) to separate the fees for licensees to change their supervisor or address from those fees for changing licensees' names or employers. Changes of employer or name require a new ID card to be printed, while changes of supervisor or address do not. The board is amending these fees to be

commensurate with the specific costs, as processing new ID cards is costlier than just changing a supervisor or address.

5. The proposed new rules provide as follows:

NEW RULE I PRIVATE INVESTIGATOR TRAINING PROGRAM

(1) The training of a private investigator shall, at a minimum, address the following:

(a) role and function of the private investigator;

(b) federal, state, and local statutes and rules applicable to the practice of private investigators;

(c) interaction and cooperation with law enforcement;

(d) criminal justice administration and information;

(e) limitations on the use of force and self-defense and the use of force continuum;

(f) emergency medical, fire, and hazardous material preparedness and response, including basic first aid, CPR, and AED training;

(g) interviews, interrogations, and report writing;

(h) crisis intervention;

(i) preservation of crime scene and handling of evidence; and

(j) ethical and legal issues, including, but not limited to:

(i) private investigator practice act and related rules;

(ii) criminal law and criminal procedure;

(iii) confidentiality and right of privacy;

(iv) searches of persons and property;

(v) limitations on the power to arrest and detain suspects; and

(vi) treatment of juveniles, persons with physical or mental disabilities, and other special classes (e.g., gender, racial, religious, or cultural).

(k) distinctions between and special issues involved in the following types of investigations: accidents, arson, assets, background, civil, criminal, domestic, industrial/employee conduct, insurance, personal injury (other than auto), and missing person;

(l) investigative photography;

(m) surveillance; and

(n) skip tracing.

(2) Supervising private investigators of private investigator trainees shall submit evidence of completion of the training program on quarterly reports as provided in ARM 24.182.511. Private investigator applicants meeting experience requirements provided in ARM 24.182.503 are deemed to have met the training program requirements set forth above. All other applicants shall submit evidence of having completed the training program as provided by ARM 24.182.503.

(3) Armed private investigators shall complete firearms qualification and requalification in accordance with ARM 24.182.420 and 24.182.421.

AUTH: 37-60-202, 37-60-303, MCA
IMP: 37-60-202, 37-60-303, MCA

NEW RULE II PRIVATE SECURITY GUARD TRAINING PROGRAM

(1) Each security company or organization that employs or intends to employ an individual as a private security guard must certify, as part of the individual's license application, that the individual has successfully completed a minimum of 16 hours of training as a prerequisite to licensure and prior to undertaking any of the duties defined as the practice of a security guard.

(2) The training must address each of the following areas:

(a) role and function of the security guard;

(b) federal, state, and local statutes and rules applicable to the practice of private security guards;

(c) interaction and cooperation with law enforcement;

(d) limitations on the use of force and self-defense and the use of force continuum;

(e) emergency medical, fire, and hazardous material preparedness and response, including officer safety, basic first aid, CPR, and AED training;

(f) communication skills, report writing, and radio communication;

(g) crisis intervention and crowd control;

(h) patrol techniques; and

(i) ethical and legal issues, including, but not limited to:

(i) confidentiality and right of privacy;

(ii) searches of persons and property;

(iii) limitations on the power to arrest and detain suspects;

(iv) treatment of juveniles, persons with physical or mental disabilities, and other special classes (e.g., racial, religious, or cultural);

(v) preservation of crime scene and handling of evidence; and

(vi) preventing abuse of authority.

(3) In addition to these training requirements, armed security guards shall complete firearms qualification and requalification in accordance with ARM 24.182.420 and 24.182.421.

(4) Training on policies, systems, and procedures internal to the employer may not be included within the total hours of training required by this rule.

AUTH: 37-60-202, 37-60-303, MCA
IMP: 37-60-202, 37-60-303, MCA

NEW RULE III SECURITY ALARM INSTALLER TRAINING PROGRAM

(1) Each electronic security company that employs or intends to employ an individual as a security alarm installer must certify, as part of the individual's license application, that the individual has successfully completed a minimum of 16 hours of training as a prerequisite to licensure, and prior to undertaking any of the duties defined as the practice of a security alarm installer.

(2) The training must address each of the following areas:

(a) role and function of the security alarm installer;

(b) federal, state, and local statutes and rules applicable to the practice of security alarm installers;

(c) national low voltage electrical codes, low voltage limitations, and wiring methods and types;

(d) installation training, including:

(i) manufacturer's product training or industry standard training;

(ii) conducting site survey;

(iii) proper device placement;

(iv) wireless devices;

(v) central station monitoring;

(vi) false alarm prevention; and

(vii) troubleshooting.

(e) safety issues and the Montana Safety Culture Act, including, but not limited to:

(i) the proper use of tools and protective equipment;

(ii) working in enclosed spaces; and

(iii) the proper use and transportation of ladders.

(3) Training on policies, systems, and procedures internal to the employer may not be included within the total hours of training required by this rule.

AUTH: 37-60-202, 37-60-303, MCA
IMP: 37-60-202, 37-60-303, MCA

NEW RULE IV ALARM RESPONSE RUNNER TRAINING PROGRAM

(1) Each electronic security company that employs or intends to employ an individual as an alarm response runner must certify, as part of the individual's license application, that the individual has successfully completed a minimum of 16 hours of training as a prerequisite to licensure, and prior to undertaking any of the duties defined as the practice of a security alarm installer.

(2) The training must address each of the following areas:

(a) role of the alarm response runner;

(b) federal, state, and local statutes and rules applicable to the practice of alarm response runners;

(c) interaction and cooperation with law enforcement;

(d) limitations on the use of force and self-defense and the use of force continuum;

(e) emergency medical, fire, and hazardous material preparedness and response, including officer safety, basic first aid, CPR, and AED training;

(f) communication skills, report writing, and radio communication;

(g) crisis intervention and crowd control;

(h) patrol techniques; and

(i) ethical and legal issues, including, but not limited to:

(i) confidentiality and right of privacy;

(ii) searches of persons and property;

(iii) limitations on the power to arrest and detain suspects;

(iv) treatment of juveniles, persons with physical or mental disabilities, and other special classes (e.g., racial, religious, or cultural);

(v) preservation of crime scene and handling of evidence; and

(vi) preventing abuse of authority.

(3) Training on policies, systems, and procedures internal to the employer may not be included within the total hours of training required by this rule.

AUTH: 37-60-202, 37-60-303, MCA
IMP: 37-60-202, 37-60-303, MCA

NEW RULE V CONTINUING EDUCATION (1) In addition to preemployment training, licensed companies or organizations that employ security guards, security alarm installers, or alarm response runners shall provide such individuals a minimum of eight hours of annual continuing education as refresher training.

(2) The continuing education requirement shall become effective after the first renewal of the individual's license and cover any combination of the preemployment training topics set forth for the individual's particular license category.

(3) Compliance with the requirements of continuing education is a prerequisite for license renewal as evidenced by the employer's affirmations on the license renewal application form, and is subject to random audit by the board.

(4) The employer must maintain documentation of the licensee's completion of continuing education for two years following the renewal cycle in which the hours were reported and submit documentation when audited. The burden is on the employer to satisfy the requirements of this rule.

(5) Failure of the employer to comply with these requirements constitutes unprofessional conduct and may subject the company license and resident manager license to disciplinary action.

AUTH: 37-1-131, 37-1-319, 37-60-202, 37-60-303, MCA
IMP: 37-1-131, 37-1-319, 37-60-202, 37-60-303, MCA

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 Private Security Patrol Officers and Investigators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpsp@mt.gov, and must be received no later than 5:00 p.m., September 27, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.privatesecurity.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 Private Security Patrol Officers and Investigators, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdpsp@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. Colleen White, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS
HOLLY DERSHEM-BRUCE,
CHAIRPERSON

/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 15, 2011

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF REAL ESTATE APPRAISERS
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.413 renewal dates and requirements, 24.207.401 fees, and the adoption of NEW RULES I definitions and II through IV appraisal management	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On September 15, 2011, at 1:00 p.m., a public hearing will be held in the Lewis and Clark Library, large conference room, 120 South Last Chance Gulch, 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 Real Estate Appraisers (board) no later than 5:00 p.m., on September 9, 2011, to advise us of the nature of the accommodation that you need. Please contact Becky Zaharko, Board of Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2354; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail dlibsdrea@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2011 Montana Legislature enacted Chapter 270, Laws of 2011 (House Bill 188), an act providing for the licensure and regulation of real estate appraisal management companies (AMC). The bill was signed by the Governor on April 22, 2011, and will become effective on October 1, 2011. The board is adopting New Rules I through IV and amending ARM 24.207.401 to coincide with the new legislative changes and further implement the legislation by setting licensure fees, establishing licensure qualifications, and mandating certain record keeping requirements for appraisal management companies. The department is amending ARM 24.101.413 to establish license renewal dates for licensed AMCs. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(ag) remain the same.

(ah)	Real Estate Appraisers	Appraisal Management Company	Annually	October 31
		General Appraiser, Certified	Annually	March 31
		General Appraiser, Certified (Out-of-State)	Annually	March 31
		Licensed Appraiser	Annually	March 31
		Mentor		
		Residential Appraiser, Certified	Annually	March 31
		Residential Appraiser, Certified (Out-of-State)	Annually	March 31
		Trainee	Annually	March 31

(ai) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

5. The board is proposing to amend the following rule. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.207.401 FEES (1) The following fees will apply to all licensed and certified real estate appraisers, trainees, and ~~license holders or~~ applicants. Fees are not refundable or transferable. Fees are not prorated for portions of the year.

(a) through (1)(f) remain the same.

~~(g) federal registry fee 25~~

(g) Applicants and renewing licensed or certified appraisers must pay a federal registry fee in the amount required by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council in accordance with Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act. The current federal registry fee is specified in the application and renewal forms and can be found by a link from the board's web site.

(h) remains the same.

(i) ~~reciprocity~~ license by credentialing ~~400~~ 475

(j) through (1)(l) remain the same.

(m) reactivation fee (inactive to active status) 250

~~(n) Additional standardized fees are specified in ARM 24.101.403.~~

(2) The following fees apply to registered appraisal management companies and applicants for registration. Fees are not refundable or transferable. Fees are not prorated for portions of the year.

(a) original application and license fee	2000
(b) appraisal management company address change, (including web site, email, telephone, fax, etc.)	45
(c) application for change in controlling person	500
(d) application for redesignation of controlling person	250
(e) application for change in contact person under [HB 188 section 6]	100
(f) annual fee for reporting of all engagements	250
(i) annual reporting of all engagements after 30 days	1000
(ii) annual reporting of all engagements after 60 days	2000
(g) renewal fee for appraisal management company with 200 or fewer engagements during previous renewal cycle	1000
(h) renewal fee for appraisal management company with more than 200 engagements during previous renewal cycle	3000
(j) fee for filing amended appraiser panel list	25

(j) Applicants and renewing appraisal management companies must pay a federal registry fee in the amount required by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council in accordance with Title XI of the Federal Financial Institutions Reform, Recovery, and Enforcement Act. The current federal registry fee is specified in the application and renewal forms and can be found by a link from the board's web site.

(k) All audited registered appraisal management companies shall pay an audit fee in the amount of $450. If the board incurs costs in excess of $450, the board may assess the appraisal management company for such additional costs incurred, and the appraisal management company shall pay such assessments within 30 days of invoicing or in the timeframe agreed upon by the board and designated appraisal management company.

(3) Additional standardized fees are specified in ARM 24.101.403.

AUTH: 37-1-131, 37-1-134, 37-54-105, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-54-105, 37-54-112, 37-54-212, 37-54-302, 37-54-310, MCA

REASON: The board is amending (1) to clarify and inform licensees and applicants that fees will not be prorated. Although the board has a long-standing policy to not prorate any licensure fees, it was not previously set forth in administrative rule.

The board is amending (1)(g) to clarify that the federal registry fee is set and collected by the Appraisal Subcommittee. The board is amending this rule to incorporate the federal registry fee by reference so the rule does not have be amended every time the fee is changed.

The board is amending (1)(i) to correctly set forth the term for licensing out-of-state applicants and correct the fee. Reciprocity requires individual reciprocal agreements between licensing entities and the board does not have such agreements. Further, because the board currently charges out-of-state applicants

the $475 original license application fee, this is a correction and not a fee increase for these applicants.

It is reasonably necessary to amend this rule to set the licensure and renewal fees for the appraisal management companies and further implement HB 188. Professional and occupational licensing boards are mandated by 37-1-134, MCA, to set and maintain licensure fees commensurate with associated costs. The board estimates that these fee changes will affect approximately 411 licensees and 40 appraisal management companies, and result in approximately $187,755 in additional annual revenue.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "Engagement" means each separate instance in which the appraisal management company engages a licensed or certified appraiser in Montana to perform an appraisal of property in Montana, regardless of the level or extent of the activity.

AUTH: 37-54-105, MCA
IMP: [HB 188 Section 3], MCA

NEW RULE II REGISTRATION AND RENEWAL OF APPRAISAL MANAGEMENT COMPANIES (1) An applicant for registration as an appraisal management company in Montana must:

(a) submit a complete application on forms prescribed by the department and approved by the board;

(b) submit the appropriate fees;

(c) provide the appraisal management company employer identification number (EIN) or Tax ID number for Montana;

(d) provide the information required in [HB 188 Section 3];

(e) provide contact information for the persons described in [HB 188 Section 3]. Such persons must provide contact information for all forms of communication used by the person in connection with the appraisal management company, including the person's physical office address, mailing address, telephone number, facsimile number, electronic mail address, and web site address;

(f) include proof that the entity and all persons described in [HB 188 Section 3] have satisfied the registration requirements, if any, of Title 35 of the Montana Code Annotated and the Montana Secretary of State's Office;

(g) provide a list of all states in which the appraisal management company is currently located and/or providing appraisal management services;

(h) provide verifications from all states in which the appraisal management company is licensed, registered, or has ever been licensed or registered; and

(i) provide specific information requested by the board regarding the business practices, any civil, criminal, or administrative actions, ethical practice of the appraisal management company's individual owners, corporation officers, directors, and controlling and contact persons as part of the background examination pursuant to [HB 188 section 5].

(2) An appraisal management company registration shall be renewed annually on or before the date set by ARM 24.101.413. In order to renew a registration, the contact person designated by the appraisal management company must submit the renewal application prescribed by the department and approved by the board, pay the appropriate renewal fee, and be the point of contact for questions and concerns regarding the application and annual renewal processes.

(3) When the ownership or business structure of a currently registered appraisal management company changes, the appraisal management company is required to complete a new appraisal management company registration application and pay the appropriate fees within ten days of the change. Failure to notify and submit the appropriate application and fees to the board within the ten days shall be cause for suspension or revocation of the appraisal management company's registration.

(4) When the individual designated as a controlling person by the registered appraisal management company is no longer employed, appointed, or contractually authorized by the appraisal management company to serve as the controlling person, the appraisal management company must submit an application to redesignate the controlling person. The application to redesignate the controlling person must be made on a form prescribed by the department, accompanied by the appropriate fees, and submitted to the board office within 20 days. Failure to notify and submit the appropriate application and fees to the board within 20 days shall be cause for suspension or revocation of the appraisal management company's registration.

(5) When the individual designated as the contact person by the registered appraisal management company is no longer the contact person and is not the designated owner or the controlling person of the appraisal management company, the appraisal management company must submit an application for change of contact person prescribed by the department and the appropriate fees to the board office within ten days. Failure to notify and submit the appropriate application and fees to the board within ten days shall be cause for suspension or revocation of the appraisal management company's registration.

(6) A registered appraisal management company must report all pending, current, or completed license disciplinary action or investigation against the company, controlling person, or other licensed individuals affiliated with the company to the board within 30 days of the proposed action or notice of such action or investigation. Failure to report such information shall be cause for suspension or revocation of the appraisal management company's registration.

(7) Annually, the registered appraisal management company must report to the board the number of engagements it had during the previous renewal year no later than November 15. The subsequent renewal fee will be based on the appraisal management company's reporting of engagements for the previous renewal year.

(a) An appraisal management company that reports its engagements after the deadline in (7) will be assessed additional fees pursuant to ARM 24.207.401.

(b) Failure to comply with the requirements of (7) on or before January 15 is cause for suspension or revocation of the appraisal management company's registration.

(8) When the registered appraisal management company adds or deletes a licensed or certified appraiser from the appraisal management company's appraiser panel, the appraisal management company must notify the board office within ten days by submitting an amended appraiser panel list with the appropriate fees. Failure to provide such information shall be cause for suspension or revocation of the appraisal management company's registration.

(9) If a registered appraisal management company is no longer providing appraisal management services in Montana, the appraisal management company must notify the board office within 30 days that they are no longer providing services. If an appraisal management company that is no longer providing services in Montana wishes to maintain its registration, it must comply with all applicable requirements, including renewal and reporting provisions. Prior to resuming services in this state, the appraisal management company must notify the board office that it intends to resume services in Montana and must provide updates regarding any changes in the information collected by the board, pursuant to this rule. Failure to provide such information shall be cause for suspension or revocation of the appraisal management company's registration.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, [HB 188 Section 3], MCA

NEW RULE III APPRAISER PANEL LIST FOR APPRAISAL MANAGEMENT COMPANIES (1) Amending the appraiser panel list is defined as the addition or deletion of a licensed or certified appraiser from the appraisal management company's appraiser panel.

(2) A registered appraisal management company must notify the board of any amendment to its appraiser panel list within ten days of the amendment. Except as provided in (3) or (4), an appraisal management company that amends its appraiser panel list must pay the amendment fee specified in ARM 24.207.401.

(3) An appraisal management company is exempt from paying the amendment fee for deleting or removing an appraiser as a result of documented violations of the Uniform Standards of Professional Appraisal Practice (USPAP).

(4) An appraisal management company must submit a current and complete list of all panel members with the renewal application annually. Additions and deletions submitted with the renewal application will not be assessed the amendment fee.

AUTH: 37-1-131, 37-54-105, MCA
IMP: 37-1-131, [HB 188 Section 3], [HB 188 Section 11], [HB 188 Section 12], MCA

NEW RULE IV APPRAISAL MANAGEMENT COMPANY RECORD KEEPING REQUIREMENTS (1) In addition to the requirements of [HB 188 section 15], the following documentation must be kept and made available to the board or its designee for audit purposes upon request:

(a) a complete original locked (PDF) version of the appraisals assigned;

(b) documentation of all alterations of the appraisal report pursuant to [HB 188 section 18], which must be kept with the originally submitted appraisal report;

(c) documentation of proof of payment in accordance with [HB 188 section 17];

(d) a list of all appraisal panel members, including dates the panel members were added or deleted;

(e) a list of all engagements, including the name of requesting entity, the appraiser assigned, and the dates assigned and completed;

(f) a list indicating the number of engagements per panel member on a yearly basis;

(g) copies of all contracts/agreements with appraisal panel members;

(h) documentation of qualifications and ownership of the appraisal management company;

(i) verifications of licensure or certification for all appraisal panel members, controlling persons, contact individuals, and any employees who are responsible for ordering appraisals, providing quality control examinations, or communicating with appraisers and independent contractors who perform appraisal reviews for property located in the state of Montana;

(j) documentation of all quality control examinations conducted for each completed engagement; and

(k) documentation of the annual appraisal review of work of all appraisers, who performed appraisals for the appraisal management company, on a periodic basis to verify appraisals are being conducted in accordance with Uniform Standards of Professional Appraisal Practice.

(2) All documentation and record keeping must be kept in a tamper-proof, secure location for a minimum of five full years following the completion of the engagement or document.

AUTH: 37-1-131, 37-54-105, MCA

IMP: 37-1-131, [HB 188 Section 3], [HB 188 Section 5], [HB 188 Section 6], [HB 188 Section 7], [HB 188 Section 8], [HB 188 Section 10], [HB 188 Section 11], [HB 188 Section 12], [HB 188 Section 13], [HB 188 Section 14], [HB 188 Section 15], [HB 188 Section 17], [HB 188 Section 18], MCA

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 Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to dlibsdrea@mt.gov, and must be received no later than 5:00 p.m., September 23, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.realestateappraiser.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 Real Estate Appraisers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to dlibsdrea@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, apply and have been fulfilled. The primary bill sponsor was contacted on May 3, 2011, by regular mail.

10. Don Harris, attorney, has been designated to preside over and conduct this hearing.

/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 15, 2011

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of ARM 36.25.801, 36.25.802, 36.25.805, 36.25.808, 36.25.809, and 36.25.811 pertaining to the land banking program	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

To: All Concerned Persons

1. On September 15, 2011 at 2:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Director's Conference Room located at 1625 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department 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 agency no later than 5:00 p.m. on September 6, 2011, to advise the department of the nature of the accommodation that you need. Please contact John Grimm, Department of Natural Resources and Conservation, 1625 11th Avenue, Helena, MT; telephone (406) 444-1868; fax (406) 444-2684; e-mail jgrimm@mt.gov.

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

36.25.801 DEFINITIONS
(1) through (16) remain the same.
(17) "Sale unit" means one or more parcels sold as a single sale.
(17) remains the same but is renumbered 18.

AUTH: 77-1-204, 77-2-308, 77-2-328, 77-2-362, MCA
IMP: 77-2-328, 77-2-362, 77-2-363, MCA

REASONABLE NECESSITY: The addition of the definition for a "sale unit" is necessary to describe more than one parcel sold as a group in a single land banking sale. The amendments allow DNRC to sell state land in "sale units" that can be made up of multiple parcels when the total sale cost would be the same as if the parcels were sold on a parcel-by-parcel basis.

36.25.802 LAND BANKING TRANSACTION COSTS ~~(1) Except as provided in 77-2-362(2)(c) , MCA, the department may use up to ten percent of the proceeds deposited in the land bank fund to pay costs of transactions, as provided in 77-2-362(2)(b), MCA.~~
(2) remains the same but is renumbered (1).
(~~3~~2) The department shall:

(a) maintain a record of each transaction; and

(b) summarize transaction costs at the completion of each sale or acquisition.; and

(c) include an accounting of transaction costs in the report required by 77-2-366 (2) , MCA.

(3) Transaction costs as outlined in ARM 36.25.807(2) or 36.25.808(7) shall be paid by the nominator or the purchaser, respectively.

AUTH: 77-2-362, MCA
IMP: 77-2-362, MCA

REASONABLE NECESSITY: Section 20, Chapter 465, 2009 Laws of Montana deleted any authority to use land bank funds to reimburse DNRC's costs incurred in conducting land banking transactions, but alternatively granted DNRC the authority to expend trust land administration account funds for those same purposes. The rule amendments also clarify that transaction costs outlined in ARM 36.25.807 or 36.25.808 are to be paid by the lessee nominator if the sale is terminated by the lessee nominator, or the purchaser if the sale is consummated.

36.25.805 PROCEDURES FOR NOMINATING AND EVALUATING STATE TRUST LANDS FOR SALE PURSUANT TO LAND BANKING

(1) The board shall, in its sole discretion, sell sale units in configurations providing the best financial and management advantage to the affected trust beneficiary state trust land on a parcel-by-parcel basis.

(2) through (3)(d) remain the same.

(e) when a parcel is nominated, the department shall notify:

(i) all persons holding a license on the parcel;,

(ii) the representative of the any affected trust beneficiary;, and

(iii) the lessee of the parcel if board or department nominated. Notice to the trust beneficiary must go to the representative identified for each trust affected by the proposed sale.

(4) If the department determines that a parcel meets the preliminary suitability requirements for sale, the department shall contract for an environmental review of the parcel under MEPA.

(a) If the MEPA analysis determines that the sale would result in a significant adverse impact on natural resources, the parcel is generally not suitable for sale unless the board determines otherwise.

(b) If the department conducts a checklist environmental assessment under MEPA, the department shall briefly explain in writing the potential impacts and mitigations for each resource and issue analyzed, including written explanations of resource or issue analysis conclusions of "no impact."

(5) After evaluation of the preliminary review and the MEPA analysis, the department shall determine whether a parcel is suitable for sale and report to the board on the parcel's suitability for sale.:

(a) Iif the department determines the parcel is not suitable for sale, the department may remove the parcel from nomination and eliminate the parcel from further review without board approval.;

(b) Tthe department shall post the report required by (4), including the MEPA analysis, in a dated notice on the department's web site or other equivalent electronic medium. The notice must be posted at least 15 days prior to before the meeting at which the board will consider the sale.;

(c) Tthe department shall notify the lessee of the department's recommendation by certified mail, as provided in 77-2-363(3), MCA. As a courtesy, the department shall try to contact the lessee by telephone about the determination.

(i) The notification must be mailed on or before the day the department posts the notice on its web site or other equivalent electronic medium.;

(ii) As a courtesy, the department shall try to contact the lessee by telephone about the determination.

(d) Tthe department shall notify all persons holding a license on the parcel and the trust beneficiary about the determination.;

(e) Aany person may appeal the department's removal of a parcel from nomination to the board the department's removal of a parcel from nomination within 15 days of the department posting the report on the web site or other equivalent electronic medium. The board shall place the appeal on the next available agenda of a regularly scheduled board meeting no later than 15 days before the meeting.; and

(f) Oon a board or department-nominated parcel, the lessee may, within 60 days of the determination, notify the department that the lessee intends to propose a land exchange.

(6) remains the same.

(7) Upon the department's report to the board under (4), the board shall approve or reject the proposed sale.:

(a) Iif the board rejects the proposed sale of the parcel, the department shall remove the parcel from nomination.; and

(b) Iif the board approves the proposed sale of the parcel, the department shall post the parcel on the department's web site or other equivalent electronic medium within 30 days of the board's approval.

(8) If the board has approved a proposed sale nominated by the lessee, the department will estimate the costs of the appraisal and will notify the lessee of the approval and request submission of the estimated costs of the appraisal and associated costs of preparing the parcel for sale.

(a) Payment must be made after the board has given preliminary approval of the sale under ARM 36.25.807(2)(b).

(b) Payment must be made ten days after the department has notified the lessee of the estimated costs.

(9) If the board has approved a proposed sale, land exchange, or acquisition, the department shall contract with a Montana-licensed certified general appraiser to appraise the parcel under consideration for sale in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP), as adopted by reference by the state Board of Real Estate Appraisers in ARM 24.207.402. The department will review or contract the review of the appraisal conducted by the contract appraiser.

(a) through (b)(iii) remain the same.

(iv) include details of the value of the parcel with legal access and a discount in appraised value due to lack of access; and for a parcel that has legal access, provide the value;

(v) for a parcel that lacks legal access, the appraiser is to:

(A) provide a value with the hypothetical condition that the parcel has legal access;

(B) if there are comparable sales available to provide a credible opinion of the value without legal access, the appraiser is to provide that value as well; and

(C) if comparable sales are not available to provide a credible opinion of value without legal access, the appraiser will note the unavailability of sufficient sales data.

(v) remains the same but is renumbered (vi).

(c) through (15) remain the same.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, 77-2-362, 77-2-363, 77-2-364, 77-2-366, MCA

REASONABLE NECESSITY: The amendments to this rule are necessary to allow DNRC to sell state land in "sale units" where the appraised land value reflects the cumulative value of the individual parcels. Selling multiple parcels as a single unit allows for greater efficiency in conducting sales. The amendments clarify that DNRC will comply with the most recent version of Uniform Standards of Professional Appraisal Practice (USPAP) since the state Board of Real Estate Appraisers has adopted USPAP for standards of practice (37-54-403, MCA). The amendments also correct minor formatting and grammatical errors.

36.25.808 PROCEDURE FOR CONDUCTING STATE TRUST LAND SALES

(1) and (2) remain the same.

(3) As required by 77-2-322, MCA, the department shall, at a minimum:~~,~~

(a) publish notice of the auction in a newspaper of general circulation in the county where the auction is to take place, once each week for four consecutive weeks preceding the due date for bid deposits; and~~. The department shall~~

(b) post the notice on the department's web site or other equivalent electronic medium and provide links to associated realty web sites, when feasible.

(4) A person wishing to bid upon a nominated state trust land ~~parcel~~ sale unit offered for sale at auction shall submit a bid deposit and execute a purchase agreement with the department. The bid deposit and purchase agreement must be postmarked no later than 20 days before the date of the auction.

(5) through (7) remain the same.

(8) The department shall retain the bid deposit and processing costs of the successful bidder. The department shall return the bid deposits of all unsuccessful bidders within ~~five~~ 15 business days following the auction.

(9) If the highest bidder fails to consummate the sale for any reason the bidder forfeits the bid deposit and processing costs. The department may then offer the state trust land sale unit ~~parcel~~ to the next highest bidder at the final sale price.

(a) If the next highest bidder, or a subsequent bidder, in sequence of bid amount, agrees to the terms of the sale, that bidder shall complete a purchase agreement and submit a bid deposit and processing costs to the department.

(b) The bid deposit and processing costs will be returned to the highest bidder if a subsequent bidder completes a purchase agreement and submits a bid deposit and processing costs.

(10) If the final bidder who agrees to consummate the sale fails to comply with the terms of the sale for any reason, that bidder's bid deposit and processing costs are forfeited.

(a) The bid deposit must be credited to the land banking trust fund.

(b) The processing costs will be credited to the land banking administration account.

AUTH: 77-1-204, 77-2-308, 77-2-362, MCA
IMP: 77-2-328, 77-2-363, MCA

REASONABLE NECESSITY: The amendments to this rule are necessary to allow DNRC to sell state land in "sale units" where the appraised land value reflects the cumulative value of the individual parcels. Selling multiple parcels as a single unit allows for greater efficiency in conducting sales. Section 20, Chapter 465, 2009 Laws of Montana deleted any authority to use land bank funds to reimburse DNRC's costs incurred in conducting land banking transactions, but alternatively granted DNRC the authority to expend trust land administration account funds for those same purposes. The amendment to (8) increases the time for DNRC to return bid deposits from five to 15 days because the interplay between DNRC and Department of Administration accounting processes generally requires additional time. The amendments also correct minor formatting and grammatical errors.

36.25.809 SETTLEMENT FOR AND REMOVAL OF IMPROVEMENTS

(1) through (5) remain the same.

AUTH: 77-1-204, 77-2-308, 77-6-302, 77-6-303, ~~77-6-304,~~ ~~77-6-305,~~ 77-6-306, MCA
IMP: 77-2-328, MCA

REASONABLE NECESSITY: The 2001 Legislature repealed 77-6-304 and 77-6-305, MCA. The pertinent authorizing statutory language now exists in 77-6-302 and 77-6-303, MCA.

36.25.811 THE LAND BANKING TRUST FUNDS

(1) and (2) remain the same.

(3) Proceeds from the sale of land from trusts may be pooled to acquire tracts of land to add to state trust land, if approved by the board after consultation with the affected beneficiaries. Using funds from multiple trusts allows the department to acquire land for more than one trust or to ultimately purchase land for a single trust if sufficient funds are not available from that trust at closing.

(a) Where land has been acquired in common for several trust beneficiaries, and the department wishes to transfer the beneficial ownership of the land to a single trust, or another trust, the department may do so by purchasing the property interests held for the other trust or trusts by remitting to their trust accounts:

(i) the initial purchase funds attributable to their undivided ownership in the land; and

(ii) the interest that would have accrued to the divesting trust or trusts as invested with the Board of Investment (BOI) short-term investment pool (STIP). The interest shall be paid from the date that the parcel was acquired for the benefit of a trust or trusts up to the date of the transfer of the beneficial ownership by the department to another trust or trusts and the transfer of funds from the acquiring trust account(s) to the divesting trust account(s); provided that,

(iii) such trust transfer purchases shall be restricted to a one-year period of time after the initial acquisition of the land for two or more trust beneficiaries.

~~(4) If land banking expires in 2011, any proceeds remaining in the state trust land bank fund must be expended by the tenth year after the effective date of each sale.~~

~~(5) Any remaining proceeds must be deposited in the appropriate permanent trust fund.~~

(6) remains the same but is renumbered (4)

~~(7) If land banking is authorized beyond 2011, the proceeds in the land banking trust funds must remain intact and available for land banking acquisitions.~~

AUTH: 77-1-204, 77-2-308, 77-2-362, 77-2-366, MCA
IMP: 77-2-328, 77-2-362, 77-2-366, MCA

REASONABLE NECESSITY: These amendments removed obsolete language since the 2009 Legislature repealed the sunset date of the land banking program in Chapter 209 of the 2009 Montana Session Laws. The amendments also account for the process for using funds from multiple trusts to purchase tracts.

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 John Grimm, Department of Natural Resources and Conservation, 1625 11th Avenue, Helena, MT; telephone (406) 444-1868; fax (406) 444-2684; e-mail jgrimm@mt.gov, and must be received no later than 5:00 p.m. on September 22, 2011.

5. John Grimm, Department of Natural Resources Real Estate Management Bureau, has been designated to preside over and conduct the public hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Amendment is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Amendment 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.

7. 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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent 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 . The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsors were contacted by e-mail on August 12, 2011.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy Butler
Tommy Butler
Rule Reviewer

Certified to the Secretary of State on August 15, 2011.

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

In the matter of the amendment of ARM 37.86.2907 pertaining to Medicaid inpatient hospital services	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 14, 2011, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 September 5, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) and (b) remain the same.

(c) The department computes a Montana average base price per case. This base price includes in-state and out-of-state distinct part rehabilitation units and long term care (LTC) facilities. Effective August 1, 2011 the average base price, including capital expenses, is ~~$4,000~~ $4,129. Disproportionate share payments are not included in this price.

(i) The average base price for Center of Excellence hospitals, including capital expenses, is ~~$6,884~~ $6,890. Disproportionate share payments are not included in this price.

(d) through (2) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. Statement of Reasonable Necessity

The Department of Public Health and Human Services (the department) is proposing an amendment to ARM 37.86.2907 regarding Medicaid inpatient hospital services.

The purpose of the proposed rule amendment is to correct the base rates regarding Medicaid inpatient hospital services for state fiscal year (SFY) 2012 that were incorrectly reported in MAR Notice 37-545.

Because the base rates for SFY 2012 were incorrectly reported in MAR Notice 37-545, this proposed amendment to ARM 37.86.2907 will reflect the correct base rates for Medicaid inpatient hospital services. The correct rates are $4,129 for the Montana average base rate and $6,890 for the base rate pertaining to Centers of Excellence. The department intends to apply the amendments on August 1, 2011, for that reason, these rates will be retroactively effective from that date.

During the public hearing pertaining to MAR Notice 37-545 on July 15, 2011, testimony was given to providers, interested parties, and the general public regarding the increase in inpatient base rates. After the 2011 Legislative session was completed, further analysis of the Medicaid budget was done by the department. This analysis indicates that an increase in inpatient base rates was warranted. However, since these increased rates were not reported in the adopted rule notice, it is necessary for the department to amend ARM 37.86.2907 to reflect the testimony given to the public and insert the correct rates into the rule.

Fiscal Impact

Because this proposed rule is a correction to ARM 37.86.2907, as published in MAR Notice 37-545, there is no fiscal impact.

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: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., September 22, 2011.

6. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

7. 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 contact person in 5 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 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.

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

/s/ John Koch
Rule Reviewer

/s/ Laurie G. Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 15, 2011

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

In the matter of the amendment of ARM 37.86.702, 37.86.801, and 37.86.802 pertaining to audiology and hearing aids	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On September 24, 2011, the Department of Public Health and Human Services proposes to amend the above-stated rules.

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 August 31, 2011, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.702 AUDIOLOGY SERVICES, SERVICE REQUIREMENTS, AND RESTRICTIONS (1) remains the same.

(2) Audiology services are hearing aid evaluations and basic audio assessments provided within the scope of practice permitted by state law to recipients with hearing disorders. Audiology services must be provided by a licensed practitioner within the scope of the practice permitted by state law. The provider's records maintained under ARM 37.85.414 must demonstrate the medical necessity for the service, and compliance with applicable supervision and protocol requirements.

(a) Medicaid coverage and reimbursement for dispensing of hearing aids is available to licensed hearing aid dispensers and audiologists, subject to the requirements of ARM 37.86.801 through 37.86.805 and the requirements generally applicable to Medicaid providers.

(3) through (5) remain the same.

(6) Basic audio assessments must include for each ear under earphones:

(a) and (b) remain the same.

(c) Speech discrimination (word recognition) test under ~~PB~~ phonetically-balanced (PB) max conditions, and either pure tone bone conduction thresholds at

the frequencies specified in (6)(a), or tympanometry, including tympanogram, acoustic reflexes, and static compliance.

(7) remains the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.801 HEARING AID SERVICES, DEFINITIONS (1) and (2) remain the same.

(3) "Dispenser" also means a person holding a current audiology license issued by the Montana Board of Speech-Language Pathologists and Audiologists under Title 37, chapter 15, MCA to engage in selling, dispensing, or fitting hearing aids.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-141, MCA

37.86.802 HEARING AID SERVICES, REQUIREMENTS, AND LIMITATIONS (1) remains the same.

(2) Medicaid payment for purchase of hearing aids will be made only to a licensed hearing aid dispenser or audiologist for Medicaid-covered services provided in accordance with all applicable Medicaid requirements and within the scope of practice permitted under the dispenser's license.

(3) through (7) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-141, MCA

4. Statement of Reasonable Necessity

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.86.702, 37.86.801, and 37.86.802 to reflect legislation which eliminated the need for audiologists to obtain a separate hearing aid dispensing license. Audiologists will be able to dispense hearing aids with their audiology license.

ARM 37.86.702

The department is proposing language to allow reimbursement to audiologists for hearing aids. The acronym "PB" was written out for purposes of clarity.

ARM 37.86.801

The department is proposing to add a definition for "dispenser" to include audiology licenses issued by the Montana Board of Speech-Language Pathologists and Audiologists.

ARM 37.86.802

The department is proposing to add language to allow reimbursement to audiologists for hearing aids.

Fiscal Impact

There is no fiscal impact with this rule amendment.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, 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 September 22, 2011. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

6. 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 Kenneth Mordan at the above address no later than 5:00 p.m., September 22, 2011.

7. If the agency receives requests for a public hearing on the proposed action from either 10% 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.

8. 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 contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by telephone, e-mail, and mail on August 15, 2011.

/s/ John Koch
Rule Reviewer

/s/ Laurie G. Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 15, 2011.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 38.3.402, 38.3.703, 38.3.705, 38.3.706, 38.3.707, 38.3.708; and the repeal of ARM 38.7.712 relating to the regulation of motor carriers.	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On September 21, 2011, at 9:00 a.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room at 1701 Prospect Avenue, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Department of Public Service Regulation 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 Service Regulation no later than 4:00 p.m. on September 19, 2011, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD (406) 444-4212; or e-mail asolem@mt.gov.

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

38.3.402 APPLICATION AND PROTEST FEES (1) Every application for operating authority and every protest to application for operating authority must be accompanied by the appropriate filing fee:

(a) The application fee for a certificate of public convenience and necessity to operate as a motor carrier is $500, $300 to be refunded by the commission if the application does not proceed to hearing.

(b) The application fee for a certificate of public convenience and necessity to operate as a motor carrier under a federal or state contract, as provided under 69-12-324, MCA, is $100.

(c) The protest fee for a motor carrier protest or motor carrier applicant protest of an application for a certificate of public convenience and necessity is ~~$200,~~ $500 ~~all to be refunded by the commission if the application does not proceed to hearing~~.

(d) If a written request for the withdrawal of a protest is received by the commission at least two business days before the scheduled hearing, the protest fee will be refunded by the commission.

AUTH: 69-12-201, MCA

IMP: 69-12-311, 69-12-312, 69-12-313, 69-12-314, 69-12-324, MCA

REASON: It is reasonably necessary to increase the protest fee $300 in order to collect revenue that is commensurate with the cost of conducting a public hearing for the purpose of granting a certificate of public convenience and necessity and to equilibrate the fees charged to applicants and protestants. This change could potentially affect approximately 200 regulated motor carriers currently holding certificates of public convenience and necessity. Further, it is reasonably necessary to clarify the commission's protest fee refund policy and implement a deadline for the withdrawal of a protest in order for the commission to cancel a scheduled public hearing and notify the public in a timely manner.

38.3.703 CARGO INSURANCE (1) Each class A or class B household goods intrastate carrier must file with this commission evidence of complying with the minimum insurance requirements of this commission as applicable to cargo insurance.

AUTH: 69-12-201, MCA
IMP: 69-12-402, MCA

REASON: It is reasonably necessary to clarify that cargo insurance is applicable only to household goods intrastate carriers.

38.3.705 FORMS FOR CERTIFICATE OF INSURANCE (1) The following forms shall be utilized by the department and may be obtained from the ~~Transportation Division of the~~ commission, 1701 Prospect Avenue, Helena, Montana 59620-2601.

~~(a) Form 1. Class A and B motor carrier merchandise or commodity (cargo) liability certificate of insurance, stock form no. 126.~~

~~(b) Form 2. Common and contract motor carrier automobile bodily injury liability and property damage liability certificate of insurance, stock form no. 125.~~

~~(c)~~(a) ~~Form 5~~ Form K. Uniform notice of cancellation of motor carrier insurance policies~~, stock form K~~.

~~(d)~~(b) ~~Form 6~~ Form H. Uniform motor carrier cargo certificate of insurance~~, stock form H~~.

~~(e)~~(c) ~~Form 7~~ Form E. Uniform motor carrier bodily injury and property damage liability certificate of insurance~~, stock form E~~.

AUTH: 69-12-201, MCA
IMP: 69-12-402, MCA

REASON: It is reasonably necessary to update the references to the standard insurance forms that must be filed with the commission to reflect current insurance industry practices.

38.3.706 ENDORSEMENTS (1) All insurance policies issued by the insurance company to the carrier must include, at time of issuance, the terms,

conditions and requirements set forth in this rule and repeated on endorsement forms approved by the commission and identified as "Endorsement MV4" and "Endorsement MV2" available from the office of the commission.

(2) The following terms, conditions and requirements are ~~hereby~~ deemed a substantive part of all policies issued, and are ~~hereby~~ incorporated therein:

(a) Cargo insurance for household good carriers (Endorsement MV2) shall be issued in an amount no less than $10,000.~~:~~

~~(i) $1,000 for cargo transported in a vehicle designed, equipped, and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;~~

~~(ii) $10,000 for all other vehicles.~~

(b) Casualty (liability) insurance (Endorsement MV4) shall be issued in an amount no less than:

(i) $~~100,000~~300,000 for ~~7~~3 passengers or less;

(ii) $~~500,000~~600,000 for ~~8~~4 to ~~15~~6 passengers;

(iii) $~~750,000~~1,000,000 for ~~16~~7 to ~~30~~10 passengers;

(iv) $~~5,000,000~~1,500,000 for ~~31~~11 to 15 passengers ~~or more~~;

(v) ~~except any motor carrier, other than as provided in (b)(i) above, operating under a certificate of public convenience and necessity authorizing passenger operations only within a particular city or 10 mile radius thereof is required to carry a minimum of $500,000 insurance regardless of size of vehicle used;~~$5,000,000 for 16 passengers or more.

~~(vi) $100,000 for transportation of nonhazardous freight in a vehicle designed, equipped and primarily intended for transportation of 7 passengers or less or a vehicle of manufacturer's GVW rating of 10,000 pounds or less designed, equipped, and primarily intended for transportation of cargo;~~

~~(vii) $500,000 for transportation of nonhazardous freight for all other vehicles;~~

~~(viii) the federal department of transportation minimum insurance limits for hazardous materials freight, as hazardous materials is defined by that department.~~

(3) These endorsements must be executed, countersigned and attached to the original policy when issued.

~~CASUALTY INSURANCE~~
~~Endorsement MV-4~~

~~The policy to which this endorsement is attached is written in pursuance of and is to be construed in accordance with the MOTOR CARRIER ACT, (TITLE 8, CHAPTER 1, RCM 1947, Sections 8-101 to 8-130) , and the rules and regulations of the Public Service Commission of the State of Montana adopted thereunder. The policy is to be filed with the state in accordance with said statutes and rules.~~

~~In consideration of the premium stated in the policy to which this endorsement is attached, the Company hereby agrees to pay any final judgment recovered against the insured for bodily injury to or the death of any person or loss of or damage to property of others (excluding injury to or death of the insured's employees while engaged in the course of their employment, and loss of or damage~~

~~to property of the insured, and property transported by the insured, designated as cargo) , resulting from the negligent operation, maintenance, or use of motor vehicles under certificate of public convenience and necessity or permit issued to the insured by the Public Service Commission of the State of Montana, under the Motor Carrier Act (R.C.M. 1947, Sections 8-101 et seq.) , within the limits of liability hereinafter provided, regardless of whether such motor vehicles are specifically described in the policy or not. It is understood and agreed that upon failure of the Company to pay any such final judgment recovered against the insured, the judgment creditor may maintain an action in any court of competent jurisdiction against the Company to compel such payment. The bankruptcy or insolvency of the insured shall not relieve the Company of any of its obligations hereunder. The liability of the Company extends to such losses, damages, injuries, or deaths whether incurring on the route or in the territory authorized to be served by the insured or elsewhere in the State of Montana.~~

~~The liability of the Company on each motor vehicle for the following limits shall be a continuing one notwithstanding any recovery hereunder:~~

~~SCHEDULE OF LIMITS~~
~~MOTOR CARRIERS - BODILY INJURY LIABILITY - PROPERTY DAMAGE LIABILITY~~

~~(1)~~ ~~KIND OF EQUIPMENT~~	~~(2)~~ ~~Limit for bodily injuries to or death of one person~~	~~(3)~~ ~~Limit for bodily injuries to or death of all persons injured or killed in any one accident (subject to a maximum of $25,000 for bodily injuries to or death of one person)~~	~~(4)~~ ~~Limit for loss or damage in any one accident to property of others (excluding cargo)~~
~~Passenger Equipment~~ ~~(Seating Capacity~~ ~~Seven passengers or less~~ ~~8 to 12 passengers, inclusive~~ ~~13 to 20 passengers, inclusive~~ ~~21 to 30 passengers, inclusive~~ ~~30 passengers or more~~ ~~Freight Equipment~~ ~~All motor vehicles used in the transportation of property~~	~~$25,000~~ ~~25,000~~ ~~25,000~~ ~~25,000~~ ~~25,000~~ ~~$25,000~~	~~$100,000~~ ~~150,000~~ ~~200,000~~ ~~250,000~~ ~~$100,000~~	~~$10,000~~ ~~10,000~~ ~~10,000~~ ~~10,000~~ ~~10,000~~ ~~$10,000~~

~~Nothing contained in the policy or any other endorsement thereon, nor the violation of any of the provisions of the policy or of any endorsement thereon by the insured, shall relieve the Company from liability hereunder or from the payment of any such final judgment.~~

~~This endorsement may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving thirty (30) days' notice in writing to the Public Service Commission of the State of Montana at its offices at 1227 11th Avenue, Helena, Montana 59601, said thirty (30) days' notice to commence to run from the date notice is actually received at the office of said Commission.~~

~~Attached to and forming a part of Policy No. ..... issued by the~~

~~Insurance Company to~~
~~(Date) (Signature of agent or other officer) Inland Marine Insurance (Cargo)~~

~~INLAND MARINE INSURANCE (CARGO)~~
~~ENDORSEMENT MV-2~~

~~PROPERTY BEING TRANSPORTED~~

~~The policy to which this endorsement is attached is written in pursuance of and is to be construed in accordance with Chapter 310, Revised Codes of Montana, 1935, (Sections 3847.1-3847.28) , and the rules and regulations of the Public Service Commission of the State of Montana adopted thereunder. The policy is to be filed with the State in accordance with said statute.~~

~~In consideration of the premium stated in the policy to which this endorsement is attached, the Company hereby agrees to pay, within the limits of liability hereinafter provided, any shipper or consignee for all loss of or damage to all property belonging to such shipper or consignee, and coming into the possession of the Insured in connection with its transportation service, for which loss or damage the Insured may be held legally liable, regardless of whether the motor vehicles, terminals, warehouses, and other facilities used in connection with the transportation of the property hereby insured are specifically described in the policy or not. The liability of the Company extends to such losses or damages whether occurring on the route or in the territory authorized to be served by the Insured or elsewhere.~~

~~Within the limits of liability hereinafter provided it is further understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement by the Insured, shall affect in any way the right of any shipper or consignee, or relieve the Company from liability for the payment of any claim for which the Insured may be held legally liable to compensate shippers or consignees, irrespective of the financial~~

~~responsibility or lack thereof or insolvency or bankruptcy of the Insured. However, all terms, conditions and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the Insured and the Company. The Insured agrees to reimburse the Company for any payment made by the Company on account of any loss or damage involving a breach of the terms of the policy and for any payment that the Company would not have been obligated to make under the provisions of the policy, except for the agreement contained in this endorsement.~~

~~The liability of the Company for the limits provided in this endorsement shall be a continuing one notwithstanding any recovery hereunder. The Company shall not be liable for an amount in excess of $1,000, in respect of any loss of or damage to or aggregate of losses or damages of or to the property hereby insured occurring at any one time or place, nor in any event for an amount in excess of $1,000, in respect of the loss of or damage to such property carried on any one motor vehicle, whether or not such losses or damages occur while such property is on a motor vehicle or otherwise.~~

~~This endorsement may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the Insured giving thirty (30) days' notice in writing to the Public Service Commission at its office at 1227 11th Avenue, Helena, Montana 59601, said thirty (30) days' notice to commence to run from the date notice is actually received at the office of said Public Service Commission.~~

~~Attached to and forming a part of Policy No .....issued by the ..... (herein called Company) of..... .....to.....~~

~~Dated at .....this day of ....., 19...~~

~~Countersigned by .....~~

~~(Authorized Company Representative)~~

AUTH: 69-12-201, MCA
IMP: 69-12-402, MCA

REASON: It is reasonably necessary to increase the amount of casualty (liability) insurance in order to adequately protect motor carrier passengers in the event of an accident. Further, it is reasonably necessary to remove antiquated forms from the commission's administrative rules.

38.3.707 MINIMUM LIMITS OF INSURANCE COVERAGE - BONDS UNACCEPTABLE (1) Minimum limits of insurance coverage as required by this commission are outlined in Endorsement MV-4 and Endorsement MV-2.

~~(2) Cargo insurance is not required for interstate carriers.~~

~~(3)~~(2) Bonds in lieu of insurance coverage are not acceptable for ~~either interstate or~~ intrastate carriers.

AUTH: 69-12-201, MCA
IMP: 69-12-402, MCA

REASON: It is reasonably necessary to remove interstate motor carriers as they are not subject to regulation by the commission.

38.3.708 SELF-INSURANCE (1) An application for self- insurance shall be in writing and duly verified by the motor carrier making same.

(2) The application shall set forth a detailed statement of the financial assets and liabilities of the applicant and contain an express agreement on the part of the applicant motor carrier to the effect that if self-insurance is permitted, the motor carrier will promptly notify the ~~C~~c commission of any material change thereafter occurring in the motor carrier's financial status.

(3) The privilege of self-insurance may be withdrawn at any time by the ~~C~~c commission. The failure of a motor carrier to promptly notify the ~~C~~c commission of any material change in said motor carrier's financial status or failure to correctly exhibit to the ~~C~~c commission the motor carrier's financial status, either in an original application for self-insurance or in any subsequent report, shall be sufficient cause for revocation of the motor carrier's certificate of public convenience and necessity.

~~(Form P. S. C. "A" - Self-Insurance)~~
~~APPLICATION FOR SELF-INSURANCE~~

~~To the Department of Public Service Regulation~~
~~of the State of Montana,~~
~~Motor Carrier Division,~~
~~Helena, Montana.~~

~~The undersigned, _____ (official title of motor carrier applicant) hereby makes application to the Department of Public Service Regulation for self-insurance pursuant to Section 69-12-402, MCA, and in this behalf represents and shows unto the Commission as follows:~~

~~That the following is a full, true and correct statement of assets and liabilities of the applicant, to-wit:~~

~~ASSETS~~	~~LIABILITIES~~
~~(List real estate, household furnishing, automobiles, stocks and/or bonds and money in bank separately.)~~	~~(List indebtedness secured by mortgage, conditional bill of sale, lien, etc., separate from unsecured debts.)~~

_____ _____

_____ _____

_____ _____

_____ _____

_____ Total indebt. $_____

Total value as'ts. $_____ Net worth $_____

The undersigned motor carrier further promises and agrees that in the event self-insurance is permitted said motor carrier will promptly notify the Commission of any material change in the financial status of said motor carrier.

Dated at _____, Montana, this _____, 19__

_____
(official title of motor carrier)

By_____
(title of person signing, i.e.,
whether owner, manager, president
or co-partner)

State of Montana)
County of)

_____ being first duly sworn upon oath deposes and says: that he is _____ (state official capacity) of the _____ (official title of motor carrier) and makes this verification for and upon behalf of said motor carrier; that he has read the above and foregoing application for self-insurance and knows the contents thereof and that the matters and things therein stated are true of his own knowledge.

_____

Subscribed and sworn to before me this _____ day of _____, 19__.

_____
Notary public for the State of Montana
Residing at _____
My commission expires _____

AUTH: 69-12-201, MCA
IMP: 69-12-402, MCA

REASON: Removal of Form P.S.C. "A"- Self-Insurance from the administrative rules is reasonably necessary because the substantive information contained on the form is required by the rule.

4. The department proposes to repeal the following rule:

38.3.712 COMMERCIAL TOW TRUCK FIRMS -- PROOF OF REQUIRED INSURANCE which can be found on page 38-186.3 of the Administrative Rules of Montana.

AUTH: 69-12-201, MCA
IMP: 69-12-102(2), MCA

REASON: Commercial tow truck firms are no longer required to file proof of insurance with the Department of Public Service Regulation following enactment of HB 103 as passed in the 2009 legislative session.

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: Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail asolem@mt.gov, and must be received no later than 5:00 p.m., September 30, 2011.

6. Jim Paine, Department of Public Service Regulation, has been designated to preside over and conduct this hearing.

7. 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 contact person in #6 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 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.

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

/s/ JIM PAINE
Jim Paine
Alternate Rule Reviewer

/s/ TRAVIS KAVULLA
Travis Kavulla
Chairman
Public Service Regulation

Certified to the Secretary of State August 15, 2011.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and amendment of ARM 42.11.105 relating to the mark-up on liquor sold by the state	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On September 27, 2011, at 9:00 a.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., September 19, 2011, 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 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 REDUCTION IN STATE MARK-UP FOR DISTILLERIES AT OR BELOW 25,000 PROOF GALLONS (1) For purposes of applying 16-2-211, MCA, the department will assume that for distilleries that manufacture, distill, rectify, bottle, or process 25,000 proof gallons or less of liquor nationwide annually, all ingredients contained in the liquor from such distilleries is comprised of 100 percent Montana-produced ingredients. A reduced mark-up rate of 20 percent will be applied to liquor products from such distilleries.

(2) The 20 percent reduced mark-up rate is determined using a 100 percent reduction in mark-up after agency liquor store commissions and discount costs and the costs to operate the state liquor warehouse have been accounted for. These costs account for half of the standard mark-up normally collected on product sold by the department. The department will annually review the associated agency liquor store commissions and discount rate costs and the costs to operate the state liquor warehouse to ensure these costs do not exceed the reduced mark-up. The department will publish any adjustments to the reduced mark-up based on the results of the annual review.

(3) A distillery requesting a reduction in the state mark-up must certify with a sworn statement, on a form supplied by the department, that the number of proof

gallons they have manufactured, distilled, rectified, bottled, or processed nationwide annually is at or below the 25,000 proof gallon threshold.

(4) A distillery requesting a reduced mark-up rate must submit this form and meet the specified requirements at the time of initially registering with the department and by February 15 of each of the following calendar years in order to receive the reduced mark-up rate.

(5) The following effective dates will apply for those distilleries that meet the reduced mark-up rate criteria:

(a) the department will apply the reduced mark-up rate to existing liquor products effective November 1, 2011;

(b) for each liquor product introduced thereafter, the distillery's current applicable mark-up rate will apply with an immediate effective date;

(c) each subsequent year, the distillery's applicable mark-up rate will be effective May 1 with the department's May, June, and July quarterly price book or the next available price book if the form is submitted after the February 15 annual deadline; and

(d) failure to submit the form annually to the department by February 15 will result in a 40 percent mark-up rate for liquor products, 20 percent for sacramental wine products, and 51 percent for fortified wine products.

(6) The department may request and examine any distillery's books and records for the purpose of determining the accuracy of the total number of proof gallons reported by the distillery.

(7) For the purpose of this rule, a distillery is considered a vendor.

AUTH: 16-1-103, 16-1-303, 16-2-211, MCA
IMP: 16-2-211, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I based on the passage of 16-2-211, MCA (Ch 345, L. 2011). The new rule is necessary to educate the distilleries on the process of requesting the reduced mark-up and to apply the law in a uniform and consistent manner. The rule also works to remove ambiguity from the mark-up request process, and thus benefits vendors and other interested public parties by improving efficiency.

Section (1) is being proposed to establish a clearly defined reduced mark-up rate for distilleries that produce 25,000 proof gallons or less of liquor nationwide annually. In recognition of the fact that the department cannot determine the origin of agricultural products used in liquor production, the reduced mark-up rate will be applied to all distilleries falling under the 25,000 proof gallon threshold. This rule allows the department to take the preventative measure of protecting the state from a potential violation of the interstate commerce clause. A 20 percent mark-up was determined based on the cost needed to cover agency liquor store commissions and discounts, and the costs of operating the state liquor warehouse.

Section (2) is being proposed to give all distilleries who qualify for the reduced mark-up rate a 100 percent reduction in mark-up after covering agency liquor store commissions, discount costs, and the state liquor warehouse operations cost. Currently, agency liquor store commissions and discounts comprise 84 percent of the costs that must be covered by the markup. The cost to operate the state liquor

warehouse comprises the remaining 16 percent.

Section (3) is being proposed to verify that the information submitted to the department is true to the best of the distiller's knowledge. The department is proposing to supply a form to the distillers to establish a uniform and consistent method for them to report their proof gallons.

Section (4) is being proposed to establish the correct mark-up rate for the distiller at the time of registering with the department and every year thereafter. The February 15 deadline is proposed to allow for enough time for changes to be made at the product level and still be able to make the deadline for when the department has to send the quarterly price book to the publisher.

Section (5) is being proposed to identify the effective dates for distillery markup rate changes. November 1, 2011 is being proposed as the effective date for the reduced mark-up to coincide with the next available quarterly price book. May 1 is being proposed as the effective date for annual distillery mark-up rate changes as it is the beginning of the first available price book after the close of the previous calendar year. The department is proposing to use the standard mark-up rate if a distillery fails to send the form annually in order to ensure the distillery meets the criteria. The proposed language would still allow a distillery to send the form if they missed the February 15 deadline; however, the effective date would correspond with the next available quarterly price book.

Section (6) is being proposed to ensure that the department is working with correct information in order to fairly and accurately calculate the posted prices they charge the agency liquor stores for the product. This bolsters accountability from both the distillery and the department, and ultimately safeguards fair business profits for the Montana liquor industry and the public who work in it.

Section (7) is being proposed to reduce confusion on who is entitled to request a reduction in the state mark-up rate. Entities that sell liquor to the state of Montana and to whom the state makes payment for product depleted from the warehouse are referred to as vendors.

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

42.11.105 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) through (20) remain the same.

(21) "Vendor" means a person, partnership, association, ~~or~~ corporation, or other business entity selling liquor to the department and to whom the department makes payment for liquor ~~received~~ depleted from the state liquor warehouse.

(22) remains the same.

AUTH: 16-1-103, 16-1-104, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-201, 16-2-301, 16-3-107, MCA

REASONABLE NECESSITY: The department is proposing to revise the definition of the term "vendor" to more accurately reflect and encompass the meaning

of the term as used by the department. As noted in ARM 42.11.105(2), all product shipped into the state liquor warehouse will be received as bailment (product owned by the vendor) and will remain until depleted or redelivered to the vendor. The proposed change to the term "vendor" creates continuity and coherence between the different sections of the rules and reduces confusion for vendors and others in the industry.

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 September 30, 2011.

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 is available on the department's web site at 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.

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, apply and have been fulfilled. The primary bill sponsor, Senator Gallus, was first contacted on June 13, 2011, by regular mail and subsequently on July 14, 2011, by electronic mail.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 15, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I, amendment of ARM 42.20.432, and repeal of ARM 42.20.172 relating to validating sales information and extension of statutory deadline for assessment reviews	))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On September 19, 2011, at 3:00 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, amendment, and repeal 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., September 12, 2011, 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 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 STATUTORY DEADLINE FOR ASSESSMENT REVIEWS

(1) For the current reappraisal cycle, tax years 2009-2014, the department will accept requests for informal assessment reviews (Form AB-26) for classes three, four, and ten. The owner of any land and/or improvements who had not previously submitted a request for an informal review of their 2009 assessment notice and who is dissatisfied with the valuation may request an informal review of the assessment notice by submitting a request for informal review form (Form AB-26) to the local Department of Revenue office in the county in which the property is located, on or before the first Monday in June of the current tax year, or within 30 days of the receipt of an assessment notice to be considered for the current tax year.

(2) For taxpayers who do not file on or before the first Monday in June of the current tax year, or within 30 days of receipt of an assessment notice, the informal review will be considered for the following year.

(3) Any adjustments to taxable value will be reflected only in the tax year

timely filed and ensuing years. There will be no retroactive adjustments to the taxable value for years prior to the accepted filing date.

(4) For subsequent reappraisal cycles, beginning in tax year 2015, taxpayers may file an informal assessment review in any year of the cycle, but only one time during a cycle unless the department determines that a change in value occurred and the taxpayer receives a new assessment notice during the cycle.

AUTH: 15-1-201, MCA
IMP: 15-7-102, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I following the passage of Chapter 399, L. 2011, by the Legislature, which allows for the taxpayer to file an informal review (Form AB-26) with the department once in any year of the reappraisal cycle.

Chapter 399 has an effective date of July 1, 2012. However, the department proposes the implementation of New Rule I at this time to reflect the general intent of the legislation. By enacting New Rule I, the department simplifies the law for taxpayers and expands the property taxpayers' opportunity to file an informal review during this reappraisal cycle and subsequent cycles. The current reappraisal cycle began January 1, 2009, and will end December 31, 2014. The subsequent cycle will begin January 1, 2015, and will end December 31, 2020.

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

42.20.432 PROCEDURE FOR VALIDATING SALES INFORMATION

(1) and (2) remain the same.

(3) The department shall consider the following sales in distressed markets if the following foreclosure related transactions comprise more than 20 percent of sales in a specific market area for model calibration and ratio studies, in accordance with the International Association of Assessing Officers (IAAO) standards:

(a) Real Estate Owned (REO) sales involving financial institutions as seller if:

(i) represented and marketed as an REO listing with a real estate listing service;

(ii) exposed for sale in the open market for a reasonable amount of time; and

(iii) verified as an REO sale.

(iv) the sales comprise more than 20 percent of sales in a specific market area; and

(v) changes in property characteristics are accounted for in model calibration and ratio studies.

(b) auction sales if:

(i) the auction was well advertised;

(ii) the auction was well attended;

(iii) the seller had a minimum bid or the right of refusal on all bids; and

(iv) the sales are not from absolute auctions that do not have a low bid clause or right of refusal and are advertised as such type of auctions.

(c) short sales if:

(i) represented and marketed as a short sale with a real estate listing service;
(ii) exposed for sale in the open market for a reasonable amount of time; and
(iii) verified as a short sale.
(4) The following sales will not be considered in distressed markets:
(a) vandalized property; and
(b) forced sales resulting from a judicial order, i.e., when the seller is either a sheriff, receiver, or other court officer.
(3) remains the same but is renumbered (5).

AUTH*:* 15-1-201*,* MCA
IMP: 15-7-111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.20.432 in response to a public discussion with the 2011 Legislature, Senate Tax Committee, concerning SB 295 (Ch. 399, L. 2011). The discussion was that if they included the authorization for distressed sales in the information reported on the Realty Transfer Certificates (RTC), the department would then use its statutory authority to implement a rule consistent with the International Association of Assessing Officers (IAAO) nationally recognized industry standards for the inclusion of distressed sales in the valuation process. IAAO standards are developed under the umbrella of the Uniform Standards of Professional Appraisal Practice (USPAP), specifically, mass appraisal standard 6. The proposed amendments to ARM 42.20.432 implement that understanding.

The only nationally recognized standards for distressed sales are those promulgated by the IAAO. Current rule language contained in ARM 42.20.432 does not consider the IAAO standard for sales in distressed markets when the department values property using the sales comparison methodology. By amending the language to reference the IAAO standards, the department will be valuing property using the sales comparison methodology.

The proposed amendments to ARM 42.20.432 will provide the public with a better understanding of what the IAAO distressed market standards are, and when the department would use these standards in their market analysis.

Furthermore, these distressed sales standards implement Ch. 399 as enacted by the Legislature.

5. The department proposes to repeal the following rule:

42.20.172 EXTENSION OF STATUTORY DEADLINE FOR ASSESSMENT REVIEWS which can be found on page 42-2027 of the Administrative Rules of Montana.

AUTH: 15-1-201, MCA
IMP: 15-7-102, MCA

REASONABLE NECESSITY: The department proposes to repeal ARM 42.20.172 following the passage of Chapter 399, L. 2011 by the Legislature. ARM 42.20.172 limits the filing of AB-26s for the current reappraisal cycle to June 30,

2010. Chapter 399, L. 2011, allows for the taxpayer to file an informal review (Form AB-26) with the department in any year of the reappraisal cycle. Therefore, because Ch. 399 renders ARM 42.20.172 obsolete, repealing this rule will simplify the law for taxpayers and disencumber the informal review filing process. The current reappraisal cycle began January 1, 2009, and will end December 31, 2014.

6. 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 September 23, 2011.

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

8. An electronic copy of this notice is available on the department's web site at 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.

9. 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 6 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Senator Bob Lake, was notified by e-mail on August 3, 2011, and subsequently by e-mail on August 12, 2011.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 15, 2011

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.21.158 and 42.21.160 relating to the aggregation of property tax for certain property	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENTS

TO: All Concerned Persons

1. On September 19, 2011, 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 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., September 12, 2011, 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 rules proposed to be amended provide as follows, stricken matter interlined, and new matter underlined:

42.21.158 PROPERTY REPORTING REQUIREMENTS (1) remains the same.

(2) As determined by the department, ~~If~~ if the ~~statewide~~ aggregate market value of ~~a person~~ an individual's or business entity's class eight property is $20,000 or less ~~as determined by the department~~, the ~~person~~ individual's or business entity's class eight property is exempt from ~~class eight~~ taxation. If the aggregate market value of an individual's or business entity's class eight property is greater than $20,000, the individual's or business entity's class eight property is subject to taxation. To ensure fair and accurate reporting of all taxable class eight property, the department may require all ~~persons~~ individuals or business entities to report all of their class eight property periodically, including exempt property. ~~The~~ Beginning in tax year 2011, the department requires biennial reporting of all exempt class eight property ~~beginning in tax year 2011~~.

(a) Starting in tax year 2012, the aggregate market value of class eight property owned by an individual or business entity will be taxed as follows:

(i) the first $2 million of taxable market value will be taxed at the rate of 2 percent; and,

(ii) all taxable market value in excess of $2 million will be taxed at the rate of 3 percent.

(b) If the conditions provided in 15-6-138, MCA, are met, the aggregate market value of class eight property owned by an individual or business entity, as provided in (2), will be taxed as follows:

(i) the first $3 million of taxable market value will be taxed at the rate of 1.5 percent; and,

(ii) all taxable market value in excess of $3 million will be taxed at the rate of 3 percent.

(c) The department will apply the operative tax rates identified in (a) or (b) to an individual's or business entity's class eight property by:

(i) determining the fraction obtained by dividing the appropriate threshold level, $2 million or $3 million, respectively, as identified in (a)(i) or (b)(i), by the individual's or business entity's total aggregated class eight taxable market value;

(ii) determining the portion of class eight property in each location that will receive the reduced tax rate, as identified in (a) or (b), by multiplying the fraction obtained in (c)(i), by the taxable market value of class eight property in each location owned by an individual or business entity;

(iii) multiplying the appropriate tax rate, identified in (a)(i) or (b)(i), by the fractional portion of the individual's or business entity's class eight property; and

(iv) applying the 3 percent rate, identified in (a)(ii) and (b)(ii), to the remaining fractional portion of the individual's or business entity's class eight property identified in (c)(ii).

(d) The following are examples of how the provisions of (2)(a), (b), and (c) apply:

(i) Example 1. On January 1, 2012, Taxpayer X owns class eight property with a total taxable market value of $5 million in four different locations throughout the state. The 2 percent rate for the first $2 million of aggregate taxable market value is applied to the property in each location as follows:

Location	Taxable market value	2% rate allocation	3% rate allocation
1	$ 500,000	2/5 x $500,000 = $200,000	3/5 x $500,000 = $300,000
2	$1,000,000	2/5 x $1,000,000 = $400,000	3/5 x $1,000,000 = $600,000
3	$1,500,000	2/5 x $1,500,000 = $600,000	3/5 x $1,500,000 = $900,000
4	$2,000,000	2/5 x $2,000,000 = $800,000	3/5 x $2,000,000 = $1,200,000
	$5,000,000		

After adjustment for the tax rate difference, the taxable value at each location is determined by multiplying the amounts allocated to each location by the applicable tax rates and adding the results.

Location	2% taxable value	3% taxable value	Total taxable value
1	$200,000 x .02 = $4,000	$300,000 x .03 = $9,000	$13,000
2	$400,000 x .02 = $8,000	$600,000 x .03 = $18,000	$26,000
3	$600,000 x .02 = $12,000	$900,000 x .03 = $27,000	$39,000
4	$800,000 x .02 = $16,000	$1,200,000 x .03 = $36,000	$52,000

The mills for the levy district within which each property is located are applied to this

total taxable value. Various government subdivisions have the authority to impose mills to raise taxes. They are sometimes collectively referred to as "taxing jurisdictions." The department creates a levy district for each distinct geographic area in the state where the same mills apply to all of the properties. For example, location 1 could be in a levy district that has mills imposed by the state, county, a high school district, and a mosquito district; location 2 could be in a levy district that has mills imposed by the state and county; location 3 could be in a levy district that has mills imposed by the state, county, a high school district, a grade school district, and a rural fire district; and location 4 could be in a levy district that has mills imposed by the state, county, city, and an urban transportation district.

(ii) Example 2. On January 1, 2012, Taxpayer Y owns class eight property with a total taxable market value of $2 million in four different locations throughout the state. No allocation of Taxpayer Y's property between the 2 percent and 3 percent tax rates is required. The property at each location is taxed at the 2 percent rate.

Location	Taxable market value	Total taxable value
1	$ 500,000	$ 500,000 x .02 = $10,000
2	$ 250,000	$ 250,000 x .02 = $ 5,000
3	$ 250,000	$ 250,000 x .02 = $ 5,000
4	$1,000,000	$1,000,000 x .02 = $20,000
	$2,000,000	

The mills for the levy district within which each property is located are applied to this total taxable value.

(iii) Example 3. On January 1, 2012, Taxpayer Z owns class eight property with a total taxable market value of $19,000 in four different locations throughout the state. Because the class eight property of an individual or business entity that owns an aggregate of $20,000 or less in market value of class eight property is exempt from taxation, (2)(a), (b), and (c) do not apply to Taxpayer Z.

(iv) Example 4. Assume the same facts as in (i) Example 1, but with the added fact that one of the locations is within a tax increment financing district (TIFD). The calculations and results of Example 1 do not change: the total taxable value is determined the same way and the mills for the levy districts are applied the same way. The fact that there is a TIFD changes only how the taxes that are levied are distributed.

~~(3) The department will provide educational information on the class eight personal property exemption to all individual taxpayers or business entities the department is aware of that currently have class eight business personal property.~~

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

~~(5)~~(4) Statements postmarked after March 15 will be assessed the penalty provided in ~~(4)~~(3) unless:

(a) the taxpayer provides evidence of their inability to comply with the timeframes set forth in ~~(4)~~(3) due to hospitalization, physical illness, infirmity, or mental illness; and

(b) evidence that this/these condition(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March 15 to prevent timely filing of the reporting form.

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

(6) For purposes of determining the statewide aggregate taxable market value of class eight property of an individual or business entity, the class eight property of an individual or business entity includes all property the individual or business entity owns, claims, possesses, controls, or manages by himself, herself, or itself directly or indirectly through an affiliated entity or family member. As used in this rule, "affiliated entity" means:

(a) a member of a combined group of unitary corporations filing a Montana corporation license tax return;

(b) a member of an affiliated group of corporations filing a U.S. Consolidated Income Tax Return;

(c) any corporation if the individual or business entity directly or indirectly owns more than 50 percent of the stock value or voting power;

(d) any partnership if the individual or business entity directly or indirectly owns more than 50 percent of capital interests or profits interests in the partnership;

(e) a corporation and a partnership if the same persons own:

(i) more than 50 percent in value of the corporation's stock; and

(ii) more than 50 percent of the capital interest or the profits interest in the partnership;

(f) an S corporation and another S corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation;

(g) an S corporation and a C corporation, if the same individuals own more than 50 percent in value of the outstanding stock of each corporation; and

(h) any trust, if the individual or business entity is the grantor or a beneficiary.

(7) ~~If the department determines that one or more of the reports required in (1) have been filed by multiple jointly owned enterprises, or if the department determines that property has been transferred to or otherwise placed under the ownership and control of a family member or other individual within 12 months prior to the filing of the report, the department shall:~~

~~(a) in the case of jointly owned business enterprises, determine whether the enterprises were created for a valid business purpose other than the minimization of tax liability; or~~

~~(b) in the case of an individual, determine whether the transfer was made for a valid purpose other than the minimization of the transferor's tax liability.~~ For purposes of applying (6):

(a) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and

(b) an individual is considered as owning the stock owned, directly or indirectly, by the individual's spouse or minor child.

(8) ~~If the department determines that no valid reason other than the minimization of tax liability exists, the department will aggregate the market value of all of the enterprises' or individual's class eight property.~~ The department may assess at the 3 percent rate all of the class eight property of any individual or

business entity that does not either:

(a) affirm on their personal property and business equipment reporting form that they have no affiliated entities; or

(b) identify their affiliated entities on their personal property and business equipment reporting form.

(9) ~~This rule is effective for tax years beginning after December 31, 2010.~~ For any tax year after 2012, the exemption from tax provided in (2) may be denied for the property of any person that does not either:

(a) affirm on their personal property and business equipment reporting form that they have no affiliated entities; or

(b) identify their affiliated entities on their personal property and business equipment reporting form as provided in (8).

AUTH: 15-1-201, 15-9-101, MCA
IMP: 15-1-121, 15-1-303, 15-6-138, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-9-101, 15-24-902, 15-24-903, 15-24-904, 15-24-905, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.21.158 in response to recent legislative action. Chapter 411, L. 2011, requires special low rates for class eight property. Ch. 411 establishes a new 2 percent tax rate for the first $2 million of statewide class eight property. It also establishes a new 1.5 percent tax rate for the first $3 million of statewide class eight property based on the state's economic performance as measured by individual and corporation license tax collections. The creation of these new tax rates also directs the department to calculate the county's entitlement share accordingly because of the loss in taxable value.

Chapter 411, needs to be read in conjunction with the existing provisions of 15-8-301, MCA, in order to make logical sense and be consistent with the fiscal note that accompanied the passage of Ch. 411. Standing by itself, Ch. 411 establishes a lower tax rate for the first $2 million of class eight property without defining the context to which the $2 million applies. Read literally, Ch. 411 could be interpreted as applying to the first $2 million of the aggregate total taxable class eight property owned collectively by all owners of such property. However, the fiscal note accompanying Ch. 411 assumes that the lower rate applies to the first $2 million of property of each taxpayer. To arrive at that result, Ch. 411 needs to be read in conjunction with 15-8-301, MCA, which sets ownership, claim, possession, control or management as the standards for determining the property attributable to each taxpayer.

The enactment of Ch. 411, highlighted the need to establish clear rules under 15-8-301, MCA, to assist taxpayers in determining all property that is under their possession, control, or management so they can accurately self-report their statewide class eight property.

Section (2), as amended, implements Ch. 411 and explains that the lower rate will be applied statewide to a percent of each item of property. It also explains how that percent is calculated. The current sections (7) and (8) are being deleted because they are not necessary with the new standards for determining the commonly controlled affiliated entities.

The four examples are provided to aid taxpayers in understanding how the calculations provided (2)(a), (b), and (c) may affect their property.

As amended, this rule underscores the need to have clear and equitable standards for determining what constitutes ownership and control, under 15-8-301, MCA. It serves as a direct implementation of Ch. 411 and achieves the objectives of equalization among individual taxpayers as required by 15-9-101, MCA. In providing for these standards and their enforcement as outlined in (8) and (9), the department establishes the criteria, processes, and standards to decide personal property ownership and personal property aggregation by owner.

The department is also proposing to amend the references to statutory authority and implementing statutes. These amendments include the addition of 15-9-201, MCA, which describes the department's statutory authority relating to the equalization of values and the addition of 15-1-121 and 15-6-138, MCA, as implementing statutes.

42.21.160 DEFINITIONS For purposes of this chapter the following definitions apply:

(1) "Affiliated entity" has the meaning given the term in ARM 42.21.158.

~~(1)~~(2) "Aggregate" means the total sum of all class eight assets owned, claimed, possessed, controlled, or managed directly or indirectly through an affiliated entity by a person ~~or business entity~~ within the state.

~~(2)~~(3) "Business entity" means an organization engaged in the production, manufacture, distribution, purchasing, or sale of an article of commerce. Such organizations include but are not limited to:

(a) a limited liability company treated for tax purposes as a sole proprietorship;

(b) a corporation (foreign or domestic);

(c) a not-for-profit corporation;

(d) a profit and not-for-profit unincorporated association;

(e) a business trust;

(f) limited liability company;

(g) limited liability partnership;

(h) a small business corporation; or

(i) a partnership.

(3) through (7) remain the same, but are renumbered (4) through (8).

~~(8) "Person" means an individual other than a business entity.~~

(9) "Family member," as used in ARM 42.21.158, means spouse or minor child.

(10) "Individual" has the meaning given to the term "person" as found in ARM 42.2.304.

(11) "Levy district" means a geographically distinct area where the same mill levies apply to all of the properties.

(12) "Taxing jurisdiction" means a governmental subdivision with the authority to tax.

(9) remains the same, but is renumbered (13).

AUTH: 15-1-201, 15-9-101, MCA

IMP: 15-1-121, 15-1-137, 15-6-138, 15-8-104, MCA

REASONABLE NECESSITY: The department proposes to amend the definitions rule to explain the meaning of some of the terms individuals and entities with business equipment and personal property need to understand to accurately report their affiliated entities, so that the department can determine the identity and location of the statewide property eligible for a reduced 2 percent tax rate.

"Affiliated entity" is being defined in (1) and "aggregate" is being amended in (2) to reflect the statutory language used for aggregating related entities.

The definition revision in (3)(a) is necessary to avoid potential confusion between business carried on by an individual without ever forming any type of entity, which is historically what the term "sole proprietorship" referred to, and business carried on by an individual through a wholly-owned limited liability company, which is now also treated for many purposes as a "sole proprietorship."

The term "family" is very narrowly defined to include only spouses and minor children, when common control is expected to exist. The department did not propose to adopt the broader familial relationships similar to those included in the Internal Revenue Code (IRC) section 267. This section of the IRC is applicable in instances of denying losses between related taxpayers, which includes all parents, children, and siblings. It is overbroad and would group family businesses where there is no effective common control or management.

The department proposes to add the definition of "individual" to the definitions rule and strike the definition of "person" to avoid any potential confusion from inconsistent definitions, as "person" is defined in 1-1-201, MCA, and ARM 42.2.304, and, as used in many of the related applicable statutes, means both individuals and business entities.

The department believes that by revising these definitions, they will be more explanatory to the taxpayers who use them, and contribute to a more accurate and efficient business equipment and personal property reporting process. Moreover, the department seeks to limit instances of over-combining property that is separately managed and controlled, by providing further guidance through the definitions.

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 September 23, 2011.

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 is available on the department's web site at 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.

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, apply and have been fulfilled. The primary bill sponsor of Senate Bill 372, Senator Bruce Tutvedt was contacted on July 13, 2011, by regular mail, and subsequently by e-mail on August 12, 2011.

/s/ Cleo Anderson	/s/ Dan R. Bucks
CLEO ANDERSON	DAN R. BUCKS
Rule Reviewer	Director of Revenue

Certified to Secretary of State August 15, 2011

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to processes and procedures for early preparation of absentee ballots	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On September 20, 2011, at 9:00 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206 of the State Capitol Building, at Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on September 13, 2011, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I PROCESSES AND PROCEDURES FOR EARLY PREPARATION OF ABSENTEE BALLOTS (1) The processes and procedures for early preparation of absentee ballots are conducted after completion of or in conjunction with the processes and procedures in 13-13-241(1) through (7), MCA.

(2) The following processes and procedures, when implemented by the election administrator, are intended to ensure the security of ballots and secrecy of votes during the early preparation of ballots not sooner than one business day before election day. The election administrator shall ensure that the early absentee ballot preparation area:

(a) permits observers to view all procedures;

(b) is arranged to ensure that observers do not interfere with the procedures, view the votes cast on individual ballots, or knowingly or unintentionally compromise the secrecy of the ballots;

(c) subject to (2)(a) and (2)(b), allows observers to be located not less than 10 feet or more than 20 feet from the boundaries of the area, or a distance determined by the election administrator based on space constraints if these distances are not feasible; and

(d) only allows access by the following, after they have taken and subscribed the official oath prescribed under Article III, section 3 of the Montana constitution:

(i) officials preparing absentee ballots, who must have identifying badges so that observers can clearly identify who is authorized to prepare ballots; and

(ii) staff authorized by the election administrator.

(3) The election administrator shall maintain the security of the observation area as specified in (2) and by:

(a) ensuring that all individuals in the observation area sign in before being permitted to be present;

(b) prohibiting electronic recording devices in the observation area; and

(c) contacting local law enforcement officials upon the occurrence of any potential or actual breach of security.

(4) The election administrator shall maintain the secrecy of votes during the early preparation of absentee ballots by:

(a) following the procedures specified in (2) and (3);

(b) requiring that election officials open signature envelopes and secrecy envelopes in a manner to ensure that the identity of the voter cannot be connected to the voter's ballot, either by observers, by election officials, or by any authorized staff participating in the early preparation process;

(c) directing election officials to place the ballots in secure containers sealed with numbered security seals as necessary and when the early preparation process is completed;

(d) handling the ballot as provided in 13-15-201, MCA, for an elector who provides identifying information on the elector's ballot and announcing that an elector has provided identifying information, but not providing the elector's identity; and

(e) instructing election officials to secure all absentee voting materials consistent with the procedures specified in 13-15-205, MCA.

(5) An absentee ballot early preparation reconciliation form:

(a) must be in the form prescribed by the Secretary of State;

(b) must be provided upon request to any observer;

(c) must be completed as specified on the form; and

(d) when completed, must be posted in the early preparation area at the conclusion of early preparation procedures.

(6) Immediately after early preparation of absentee ballots and until ballot counting begins on election day, the prepared absentee ballots in secure containers with numbered security seals:

(a) must be placed in a secure location that prevents unauthorized access;

(b) must not be accessed except by at least two election officials acting together who:

(i) are authorized by the county election administrator;

(ii) have each taken and subscribed the official oath prescribed under Article III, section 3 of the Montana constitution; and

(iii) sign a log sheet each time that they access the secured ballots.

(7) Election administrators shall maintain and make available for public inspection a security log in a form prescribed by the Secretary of State that accurately tracks seals placed on and removed from any early preparation absentee ballot container.

(8) Nothing in this rule shall be construed to permit an election official to count absentee ballots or other ballots before election day.

AUTH: Chapter 331, Section 2, L. 2011
IMP: Chapter 331, Section 1, L. 2011

REASON: This proposed rule is consistent with the 2011 Legislature's rulemaking mandate in House Bill 530. The Legislature specified the rulemaking topics, mainly the security and secrecy of pre-election day absentee ballot preparation, but left the Secretary of State with the latitude to determine the actual processes and procedures. As required, the proposed rule provides for the allowable distance from the observers to the judges and ballots, the security in the observation area, secrecy of votes during the preparation of the ballots, and security of the secured ballot boxes in storage until tabulation procedures begin on election day.

The distance between observers and the judges and ballots is the least amount of space required to ensure the secrecy of the ballot while allowing the process to be as open as possible. The distances were determined by the Secretary of State in consultation with county election administrators, to maintain the security of the process, while allowing the process to be open, leaving some flexibility for physical space constraints. A lesser distance would not protect ballot secrecy while a greater distance would make observation of the procedures difficult. All election officials and election judges currently must have sworn or affirmed to the official oath before commencing election day duties. Because the legislation adopted in House Bill 530 permits election administrators and election judges to commence their ballot preparation duties before election day, the oath must be taken on or before the day of early preparation.

In order to maintain security in the observation area, the election administrator, election judges, and observers must understand who is authorized to perform specific tasks. By wearing identifying badges, everyone in the room will be able to clearly see who is allowed to prepare ballots, making it difficult for unauthorized persons to handle ballots. Likewise, by requiring observers to sign in, the election administrator will be able to identify those in the observation area and, if necessary, preserve a record of witnesses to any events. Electronic recording devices could allow the recording of information that may compromise the secrecy of votes. Ever increasing technological advancements could allow those in the observation areas to view and record information via an electronic device that the allowable distances discussed above are designed to protect. Consequently, the use of recording devices cannot be allowed.

The use of the ballot reconciliation forms as specified in the rule helps to create a written record of the number of absentee ballots issued, the number of absentee ballots received back, and the number of absentee ballots prepared. The use of a ballot reconciliation form for early preparation of absentee ballots is consistent with the administrative procedure already in place to reconcile all ballots on election day.

The use of tamper-proof, numbered security seals and restrictions on access to the absentee ballots allows for the creation of a paper trail as to who accessed the

containers as well as an easily identifiable method to indicate if the containers have been opened.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., October 28, 2011.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. The Secretary of State 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 Secretary of State.

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, apply and have been fulfilled. The primary bill sponsor was contacted by U.S. mail on August 2, 2011.

/s/ JORGE QUINTANA	/s/ LINDA MCCULLOCH
Jorge Quintana	Linda McCulloch
Rule Reviewer	Secretary of State

Dated this 15th day of August, 2011.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.3.1716, 44.3.2014 through 44.3.2016, 44.3.2109, 44.3.2203, and 44.3.2304 concerning elections	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 20, 2011, at 9:30 a.m., the Secretary of State will hold a public hearing in the Secretary of State's Conference Room, Room 206 of the State Capitol Building, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Secretary of State 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 Secretary of State no later than 5:00 p.m. on September 13, 2011, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana, 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

3. The rules as proposed to be amended provide as follows:

44.3.1716 REJECTED BALLOTS -- HANDLING PROVIDED BY RULE

(1) remains the same.

~~(2) The unopened absentee ballot envelope of an elector who has voted in person as provided in 13-13-204, MCA, must be marked "voted in person" and must be initialed by election judges.~~

~~(3)~~ (2) After being handled and marked as provided in this rule, all rejected ballots must be placed in a package or container in which the voted ballots are to be placed and the package or container must be sealed, dated, and marked. After a package or container is sealed pursuant to this section, a package or container may not be opened without a court order.

AUTH: 13-15-108, MCA
IMP: 13-15-108, MCA

REASON: Subsection (2) closely reflects 13-13-204, MCA, prior to its amendment by the 2011 Montana Legislature. Also, (2) assumes that the procedure occurs only at the polling place, but the amendment to 13-13-204, MCA, allows the procedure to occur at the county election office as well.

44.3.2014 MAINTENANCE OF ACTIVE AND INACTIVE VOTER REGISTRATION LISTS FOR ELECTIONS (1) Election administrators shall, in every odd-numbered year do at least one of the following:

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

(c) mail a targeted mailing to electors who failed to vote in the preceding federal general election, applicants who failed to provide required information on registration cards, and provisionally registered electors by:

(i) remains the same.

(ii) comparing the ~~list of nonvoters~~ nonvoters and applicants described in (3) against the national change of address files, followed within 30 days by the appropriate forwardable confirmation notices as described in (2) to those electors who appear to have moved from their addresses of record;

(iii) and (1)(c)(iv) remain the same.

(2) Any notices not returned or returned as undeliverable to the election administrator after using ~~the~~ a procedure~~s~~ provided in (1) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the election administrator shall move the elector to the inactive list.

(3) and (4) remain the same.

(5) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and ~~appears in order to vote or votes by absentee ballot~~ meets the requirements provided in 13-2-222, MCA, for reactivation in any election.

(6) remains the same.

AUTH: 13-2-108, MCA
IMP: 13-2-220, MCA

REASON: The amendments to (1) and (2) reflect the amendments made to 13-2-220, MCA, by the 2011 Montana Legislature. Subsection (5) is amended to reference the requirements in 13-2-222, MCA, so that the rule does not need to be updated each time the requirements in 13-2-222, MCA, are changed.

44.3.2015 LATE REGISTRATION PROCEDURES (1) through (3) remain the same.

(4) If an elector has already been sent an absentee ballot for the election, the elector may change the elector's voter registration information ~~only with respect to the next election, and may not receive another ballot from the county in which the voter is newly registered. This voter registration shall become effective on the day following the day of the election for which the elector has already been sent an absentee ballot~~ for that election only if the absentee ballot had not been received and is designated as void.

(5) through (7) remain the same.

AUTH: 13-2-108, MCA

IMP: 13-2-304, 13-2-514, MCA

REASON: Subsection (4) is modified to reflect changes made to 13-2-304, MCA, by the 2011 Montana Legislature.

44.3.2016 STATEWIDE VOTER REGISTRATION DATABASE

(1)(a) through (1)(c) remain the same.

~~(d) procedures and timelines to be used by election administrators when providing the information required in 13-2-123, MCA;~~

~~(e)~~ (d) technical security of the statewide voter registration database;

~~(f)~~ (e) information security with respect to keeping from general public distribution driver's license numbers, whole or partial social security numbers, and address information protected from general disclosure pursuant to 13-2-115, MCA; and

~~(g)~~ (f) quality control measures for the system and system users.

(2) and (3) remain the same.

AUTH: 13-2-108, MCA
IMP: 13-2-108, MCA

REASON: Subsection (1)(d) is being deleted because 13-2-123, MCA, was repealed by the 2011 Montana Legislature.

44.3.2109 PROCEDURES FOR CHALLENGES

(1) An elector's right to vote may be challenged at any time by any registered elector. The challenger must fill out and sign an affidavit stating the grounds of the challenge and providing any evidence supporting the challenge to the election administrator or, on election day, to an election judge.

~~(2) A challenge may be made on the grounds that the elector:~~

~~(a) is of unsound mind, as determined by a court;~~

~~(b) has voted before in that election;~~

~~(c) has been convicted of a felony and is serving a sentence in a penal institution;~~

~~(d) is not registered as required by law;~~

~~(e) is not 18 years of age or older;~~

~~(f) has not been, for at least 30 days, a resident of the county in which the elector is offering to vote, unless the elector is exempt under 13-2-514, MCA, and has been a resident of the state for at least 30 days; or~~

~~(g) is a provisionally registered elector whose status has not been changed to a legally registered voter.~~

~~(3) When a challenge has been made under this rule:~~

~~(a) prior to the close of registration under 13-2-301, MCA, the election administrator shall question the challenger and the challenged elector and may question other persons to determine whether the challenge is sufficient or insufficient to cancel the elector's registration under 13-2-402, MCA; or~~

~~(b) after the close of regular registration or on election day, the election administrator or, on election day, the election judge shall allow the challenged~~

~~elector to cast a provisional paper ballot, which must be handled as provided in 13-15-107, MCA.~~

~~(4) In response to a challenge, the challenged elector may fill out and sign an affidavit to refute the challenge and swear that the elector is eligible to vote.~~

~~(a) If the challenge was not made in the presence of the elector being challenged, the election administrator or election judge shall notify the challenged elector of who made the challenge and the grounds of the challenge and explain what information the elector may provide to respond to the challenge. The notification must be made pursuant to 13-13-301(4)(b), MCA.~~

~~(b) The election administrator or, on election day, the election judge shall also provide to the challenged elector a copy of the challenger's affidavit and any supporting evidence provided.~~

~~(5) The Secretary of State shall provide standardized affidavit forms for challengers and challenged electors.~~

~~(6)~~ (2) Any challenge made under this rule shall be decided in favor of the challenged elector, unless it is demonstrated by a preponderance of the evidence that the challenged elector should not be permitted to vote.

AUTH: 13-13-301, MCA
IMP: 13-13-301, MCA

REASON: Subsections of the rule have been deleted because they needlessly repeat statutory language.

44.3.2203 FORM OF ABSENTEE BALLOT APPLICATION AND ABSENTEE BALLOT TRANSMISSION TO ELECTION ADMINISTRATOR (1) through (5) remain the same.

(6) The election administrator shall mail a forwardable address confirmation form, prescribed by the Secretary of State in January of each year to each elector who has requested an absentee ballot for subsequent elections. The annual address confirmation form is for elections to be held between February 1 following the mailing through January of the next year. The form shall, in bold print, indicate that the elector may update the elector's mailing address using the form. The elector or elector's agent shall sign the form, indicate the address to which the absentee ballot should be sent, and return the form to the election administrator. If the form is not completed and returned, the election administrator shall remove the elector from the ~~register of electors who have requested an absentee ballot for subsequent elections~~ annual absentee list.

(7) remains the same.

(8) An elector who has been removed from the ~~register of electors who have requested an absentee ballot for each subsequent election~~ annual absentee list may later request to be mailed an absentee ballot for subsequent elections.

AUTH: 13-1-202, MCA
IMP: 13-13-211, 13-13-212, 13-13-213, MCA

REASON: The amendments to the rule are made to reflect the amendments made to 13-13-212, MCA, by the 2011 Montana Legislature to clarify that it is the annual absentee list, not the register of electors, that is referred to in this statute.

44.3.2304 PROCEDURES FOR ABSENTEE AND MAIL BALLOT VOTING - DETERMINING THE SUFFICIENCY OF IDENTIFICATION OF PROVISIONALLY REGISTERED ELECTORS (1) After completion of the signature verification procedures in 13-13-241 or 13-19-309, MCA, as applicable, the election administrator shall determine prior to an election whether a provisionally registered absentee or mail ballot elector has provided sufficient identification defined in ARM 44.3.2302(6) or eligibility information to allow a ballot to be counted:

(a) If the identification or eligibility information is insufficient, an election official or election worker shall follow procedures described in 13-13-241, MCA, and these rules to allow a provisionally registered absentee or mail ballot elector who failed to provide proper identifying information in the outer return envelope to verify eligibility to vote:

(i) a ballot cast by an elector whose voter identification information is insufficient or whose name does not appear on the precinct register must be handled as a provisional ballot under 13-15-107, MCA;

(ii) an absentee or mail ballot elector whose ballot is determined to be provisional has until 5:00 p.m. on the day after the election to provide sufficient identification or eligibility information either in person, by facsimile, by electronic mail, or by mail postmarked on the day of the election or the day after the election;

(iii) an election official or election worker shall notify the absentee or mail ballot elector by mail or by the most expedient method available that the elector's identification or eligibility information was insufficient and that the elector's ballot will be treated as a provisional ballot until the elector provides sufficient information under 13-13-114, MCA;

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

(b) Upon receipt of eligibility information or of one of the forms of required identification defined in ARM 44.3.2302(6), if the identification form is verified through a voter verification process or another form of identification provided in ARM 44.3.2302(6) is sufficient:

(i) an election official or election worker shall mark on the absentee or mail ballot outer return envelope that sufficient eligibility information or identification was provided by the elector; and

(ii) remains the same.

(c) An election official or election worker who receives identification information shall retain in a sealed package the copy of identification provided by the provisionally registered absentee or mail ballot elector. The sealed package containing the copy of identification may not be opened without a court order.

AUTH: 13-13-603, MCA
IMP: 13-13-114, 13-13-201, 13-13-241, MCA

REASON: The rule is amended to reflect statutory changes made by the 2011 Montana Legislature.

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: Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801; telephone (406) 461-5173; fax (406) 444-4240; or e-mail jquintana@mt.gov, and must be received no later than 5:00 p.m., October 28, 2011.

5. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

6. The Secretary of State 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 Secretary of State.

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/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 15th day of August, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of new rules I through XX pertaining to reasonable accommodations and equal access	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On June 9, 2011, the Department of Administration published MAR Notice No. 2-21-446 regarding a public hearing to consider the proposed adoption of the above-stated rules at page 966 of the 2011 Montana Administrative Register, Issue Number 11.

2. On July 8, 2011, the department held a public hearing on the proposed adoption, amendment, and repeal.

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: The department received a request for clarification on the use of "agency managers" throughout the policy.

RESPONSE #1: The department will not define "agency managers," since organizational structures vary within state government. The department will include language in New Rule III (2.21.4103) allowing agencies to define "agency managers" consistent with their internal policies and procedures.

COMMENT #2: The department received a request for an online reporting tool, in lieu of the proposed Word document, referred to in New Rule XVI (2.21.4121) to lessen the potential burden on an already busy staff.

RESPONSE #2: The department will not provide an online reporting tool. It has created an Excel spreadsheet in lieu of a Word document. The spreadsheet is available at http://hr.mt.gov/hrpp/policies.mcpx. The department does not believe tracking and reporting of reasonable accommodations will require a significant amount of time or effort regardless of the tool used.

COMMENT #3: The department received a recommendation to clarify New Rule XVIII (2.21.4127). The rule is not clear that managers must consider reasonable modifications to policies, practices, and procedures to promote equal access to programs, services, and activities offered to the public. The statement of reasonable necessity addressed reasonable modifications only in an employment context.

RESPONSE #3: The department will include language in the final rule clarifying that reasonable modifications apply to programs, services, and activities offered to the public to promote equal access.

COMMENT #4: The department received comments concerning terminology, formatting, and sentence clarity under New Rules III (2.21.4103), VI (2.21.4107), IX (2.21.4114), X (2.21.4115), XI (2.21.4116), and XIII (2.21.4118).

RESPONSE #4: The department will make the proposed changes to promote consistency and clarity of the rules.

4. The department has adopted New Rules I (2.21.4101), II (2.21.4102), IV (2.21.4105), V (2.21.4106), VII (2.21.4112), VIII (2.21.4113), XII (2.21.4117), XIV (2.21.4119), XV (2.21.4120), XVI (2.21.4121), XVII (2.21.4122), XIX (2.21.4128), and XX (2.21.4104) as proposed.

5. The department has adopted New Rules III (2.21.4103), VI (2.21.4107), IX (2.21.4114), X (2.21.4115), XI (2.21.4116), XIII (2.21.4118), XVIII (2.21.4127) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

RULE III (2.21.4103) DEFINITIONS (1) and (2) remain as proposed.

(a) "Designated personnel" means agency representatives identified ~~in these rules~~ this subchapter as those responsible for processing reasonable accommodation requests including agency managers (as defined by the agency in policy or rule to promote consistency with internal policies and procedures), ADA coordinators, Equal Employment Opportunity (EEO) officers, human resource staff, and individuals involved in the hiring process.

(b) remains as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

RULE VI (2.21.4107) RESPONDING TO REASONABLE ACCOMMODATION REQUESTS (1) through (3) remain as proposed.

(4) Employees may refuse the elected accommodation; however, if the employee cannot perform the essential functions of the job, with or without the accommodation, the refusal may limit the employee's ~~may not be qualified~~ qualifications for the position.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

RULE IX (2.21.4114) REQUESTING MEDICAL DOCUMENTATION

(1) remains as proposed.

(2) Agency managers may request documentation from an appropriate health care professional when the need for a reasonable accommodation is not known or obvious. If an agency manager requests medical documentation, the manager ~~shall~~:

(a) shall provide the request to the applicant or employee in writing;

(b) shall explain the need for documentation and limit the request to information about the individual's disability, functional limitations, and the need for a reasonable accommodation to perform the essential functions of the job;

(c) shall include a statement to the applicant, employee, or health care provider to not provide genetic information as specified under ARM Title 2, chapter 21, subchapter 40, Equal Employment Opportunity, Nondiscrimination, and Harassment Prevention Policy;

(d) may not request more information than required to support the need for a specific type of accommodation; and

(e) may not request documentation when the disability and the need for a reasonable accommodation are obvious or when the individual has already provided sufficient information to substantiate their need for a reasonable accommodation.

(3) remains as proposed.

(4) Agency managers shall document the time exhausted while waiting for documentation. This time ~~will~~ does not count against the agency's 30-working-day timeline to process the request.

(5) through (7) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

RULE X (2.21.4115) APPROVING REASONABLE ACCOMMODATION REQUESTS (1) remains as proposed.

(2) If agency managers determine the request is reasonable, they ~~must~~ shall:

(a) through (e) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

RULE XI (2.21.4116) REASSIGNING AN EMPLOYEE AS A REASONABLE ACCOMMODATION (1) through (2)(d) remain as proposed.

(3) If reassigning an employee would violate a seniority system or collective bargaining agreement, it ~~may not be reasonable to reassign~~ is not reasonable to reassign an employee.

(4) remains as proposed.

(5) "Vacant" means the position is available when the employee asks for an accommodation, or the employer knows a position ~~will~~ is to become available within a reasonable amount of time. Agency managers shall determine a reasonable amount of time on a case-by-case basis.

(6) remains as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

RULE XIII (2.21.4118) DISCHARGING EMPLOYEES WITH DISABILITIES

(1) Agency managers may ~~consider discharging~~ discharge an employee with a disability when the employee is no longer able to perform the essential functions of their job with or without a reasonable accommodation, and ~~they~~ managers have ruled out all possible options.

(2) If denial of a reasonable accommodation results in the discharge of an employee, the appeal process outlined in ARM Tile 2, chapter 21, subchapter 65, Discipline Policy or applicable collective bargaining agreement ~~will~~ supersedes the reasonable accommodation appeal process.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

RULE XVIII (2.21.4127) REASONABLE MODIFICATION PROCEDURES

(1) Agency managers shall make reasonable modifications to policies, practices, and procedures that deny, or have the potential to deny, equal access to programs, services, or activities to individuals with disabilities, unless doing so would result in an undue burden or fundamentally alter a program, service, or activity.

(2) remains as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, 49-3-201, 49-3-205, MCA

By: /s/ Sheryl Olson
Sheryl Olson, Deputy Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 15, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through IX, the amendment of ARM 2.21.4001, 2.21.4002, 2.21.4005, 2.21.4013, 2.21.4014, and the repeal of ARM 2.21.4003, 2.21.4004, 2.21.4006, 2.21.4007, and 2.21.4012 pertaining to equal employment opportunity, nondiscrimination, and harassment prevention	)))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 9, 2011, the Department of Administration published MAR Notice No. 2-21-448 regarding a public hearing to consider the proposed adoption, amendment, and repeal of the above-stated rules at page 982 of the 2011 Montana Administrative Register, Issue Number 11.

2. On July 8, 2011, the department held a public hearing on the proposed adoption, amendment, and repeal.

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: The department received a request for clarification on the use of "agency managers" throughout the policy.

RESPONSE #1: The department will not define "agency managers," since organizational structures vary within state government. The department will include language in ARM 2.21.4005 allowing agencies to define "agency managers" consistent with their internal policies and procedures.

COMMENT #2: The department received a request for an online reporting tool, in lieu of the proposed Word document, referred to in New Rule VII (2.21.4027) to lessen the potential burden on an already busy staff.

RESPONSE #2: The department will not provide an online reporting tool. It has created an Excel spreadsheet in lieu of a Word document. The spreadsheet is available at http://hr.mt.gov/hrpp/policies.mcpx. The department does not believe tracking and reporting of internal complaints will require a significant amount of time or effort regardless of the tool used.

COMMENT #3: The department received a recommendation to use "will" or "shall" in lieu of "may" under ARM 2.21.4005(2).

RESPONSE #3: The department will not make this change, as rule and statute use "may not" as a strict prohibition. In writing rules, the department follows, as appropriate, the Legislative Services Division's Bill Drafting Manual. The manual requires that the phrase "may not" be used when qualifying a verb in the active voice that prohibits some act.

COMMENT #4: The department received comments concerning terminology, formatting, and sentence clarity under New Rules I(2), III(5), IV(1)(2), V(2), and VII(2) and (3). The department received similar comments for ARM 2.21.4005(5), 2.21.4013(1), (3), and (4), and 2.21.4014(2).

RESPONSE #4: The department will make the proposed changes to promote consistency and clarity of the rules.

4. The department has adopted New Rules II (2.21.4029), VI (2.21.4022), VIII (2.21.4028), and IX (2.21.4008) as proposed.

5. The department amended ARM 2.21.4001 and 2.21.4002 as proposed.

6. The department has adopted New Rules I (2.21.4009), III (2.21.4019), IV (2.21.4020), V (2.21.4021), and VII (2.21.4027), but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (2.21.4009) COMPLIANCE WITH THE FEDERAL GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008 (GINA) (1) through (2)(b) remain as proposed.

(c) ~~making requests for~~ requesting information about an individual's current health status in a way that is likely to result in obtaining genetic information.

(3) through (5) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

NEW RULE III (2.21.4019) INITIATING AN INTERNAL COMPLAINT

(1) through (4) remain as proposed.

(5) The human resource manager, EEO officer or ADA coordinator, legal counsel, and appropriate manager shall meet to discuss the appropriate course of action. If the complaint is against any of these individuals, ~~they are~~ that individual is excluded from the meeting. The discussion must focus on measures to stop the alleged behavior, a review of the investigative process, and management's role in the process.

(6) and (7) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

NEW RULE IV (2.21.4020) INVESTIGATING A COMPLAINT (1) The EEO officer, ADA coordinator, or another representative chosen by management shall ~~promptly~~ begin an investigation upon receiving a complaint.

(2) and (2)(a) remain as proposed.

(b) what retaliation is and that it ~~will not be tolerated~~ is unacceptable behavior; and

(c) through (4)(c) remain as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

NEW RULE V (2.21.4021) POST-INVESTIGATION ACTIONS (1) through (2)(b) remain as proposed.

(c) reemphasize that retaliation ~~will not tolerated~~ is unacceptable behavior; and

(d) contact the complainant within 30 days to ensure the behavior has stopped and ~~there was~~ no retaliation has occurred.

(3) remains as proposed.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

NEW RULE VII (2.21.4027) TRACKING AND REPORTING INTERNAL COMPLAINTS (1) through (2)(b) remain as proposed.

(c) the protected class or basis of the complaint ~~(protected class)~~;

(d) the reason for complaint (~~e.g.,~~ for example, employment-related, denied access to a program or service, or inappropriate comment); and

(e) the outcome of the complaint.

(3) The report is for tracking purposes only and ~~must~~ may not include confidential information such as names of individuals involved.

(4) remains as proposed.

7. The department has amended ARM 2.21.4005, 2.21.4013, and 2.21.4014 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.4005 EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND NONDISCRIMINATION (1) remains as proposed.

(2) Agency managers, as defined by the agency in policy or rule to promote consistency with internal policies and procedures, may not tolerate discrimination or

harassment based on an individual's race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, political beliefs, genetic information, veteran's status, culture, social origin or condition, or ancestry. Likewise, agency management may not tolerate discrimination or harassment because of a person's marriage to or association with individuals in one of the previously mentioned protected classes.

(3) through (4)(e) remain as proposed.

(5) Agency managers who observe behaviors that may be viewed as discriminatory shall ~~immediately~~ stop the behavior and ~~promptly~~ notify their agency's EEO officer, Americans with Disabilities Act (ADA) coordinator, or human resources manager.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.4013 HARASSMENT (1) Harassment, including sexual harassment, ~~may~~ consists of, but is not limited to, oral, written, or electronic communications (~~e.g.,~~ for example, voice mails, e-mails, text messages, or other social networking tools) in the form of repeated and unwelcomed jokes, slurs, comments, visual images, or innuendos based on a protected class. Even mutually agreeable behavior, or behavior accepted between two or more people, can be offensive to others; for this reason it is prohibited in the workplace.

(2) remains as proposed.

(3) Agency managers may not tolerate any behavior that negatively focuses on a protected class. Although a behavior or pattern of behavior ~~may~~ might not constitute illegal discrimination, it ~~may~~ might still violate this rule.

(4) Agency managers who observe behaviors that ~~may~~ could be viewed as discrimination or harassment shall ~~immediately~~ stop the behavior and ~~promptly~~ notify their agency's EEO officer, ADA coordinator, or human resources manager.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

2.21.4014 RETALIATION (1) remains as proposed.

(2) Agency managers who become aware of retaliation shall ~~immediately~~ inform the agency's human resource manager, human resource staff, EEO officer, or ADA coordinator.~~, who can~~ The human resource manager, human resource staff, EEO officer, or ADA coordinator shall advise management on the appropriate course of action.

AUTH: 2-18-102, MCA
IMP: 2-18-102, MCA

8. The department repealed ARM 2.21.4003, 2.21.4004, 2.21.4006, 2.21.4007, and 2.21.4012 as proposed.

By: /s/ Sheryl Olson
Sheryl Olson, Deputy Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 15, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.21.6608, 2.21.6613, 2.21.6615, and 2.21.6616 pertaining to employee records management	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On June 9, 2011, the department published MAR Notice No. 2-21-453 regarding a public hearing on the proposed amendment of the above-stated rules at page 998 of the 2011 Montana Administrative Register, Issue No. 11.

2. On July 8, 2011, the department held a public hearing on the proposed amendment.

3. The department received no testimony or comments regarding the proposed amendment.

4. The department has amended ARM 2.21.6608, 2.21.6613, 2.21.6615, and 2.21.6616 as proposed.

By: /s/ Sheryl Olson
Sheryl Olson, Deputy Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 15, 2011.

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

In the matter of the amendment of ARM 2.43.1302, 2.43.1306, 2.43.2102, 2.43.2105, 2.43.2109, 2.43.2110, 2.43.2114, 2.43.2115, 2.43.2120, 2.43.2301, 2.43.2309, 2.43.2310, 2.43.2317, 2.43.2319, 2.43.2608, 2.43.2609, 2.43.2702, 2.43.2703, 2.43.2704, 2.43.2901, 2.43.3001, 2.43.3004, 2.43.3005, 2.43.3009, 2.43.3402, 2.43.3540, 2.43.3545, 2.43.4616, 2.43.4617, and 2.43.4807, all pertaining to the operation of the retirement systems and plans administered by the Montana Public Employees' Retirement Board	)	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 14, 2011 the Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-455 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1211 of the 2011 Montana Administrative Register, Issue Number 13.

2. The PER Board has amended the following rules as proposed: ARM 2.43.1306, 2.43.2105, 2.43.2109, 2.43.2110, 2.43.2114, 2.43.2115, 2.43.2120, 2.43.2301, 2.43.2309, 2.43.2310, 2.43.2317, 2.43.2319, 2.43.2608, 2.43.2609, 2.43.2702, 2.43.2703, 2.43.2704, 2.43.2901, 2.43.3001, 2.43.3004, 2.43.3005, 2.43.3009, 2.43.3402, 2.43.3540, 2.43.3545, 2.43.4617, 2.43.4807.

3. The PER Board is not amending the following rules: ARM 2.43.1302 and 2.43.2102.

4. The PER Board has amended the following rule as proposed, but with the following change from the original proposal, new matter underlined, deleted matter interlined:

2.43.4616 INTEREST PAID TO PARTICIPANTS (1) A participant's DROP account must include compounded annual interest.

(2) Subject to (3), the interest rate will be fixed at the end of each fiscal year and will equal the actuarially assumed rate of return for the trust fund.

(3) Interest credited on the DROP account shall comply with any applicable provisions of 29 USC section 623(i)(10)(B)(i) of the federal Age Discrimination in

Employment Act (ADEA) and any applicable federal treasury regulations establishing market rates of return for purposes of complying with ADEA.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-2-303(23), 19-9-1206, 19-9-1208, MCA

5. The PER Board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT #1: The definition of "direct rollover" in ARM 2.43.1302 amends or enlarges the statutory definition found in 19-2-303(19), MCA. There are a number of Montana Supreme Court cases holding that rules may not alter statutes. If the board finds it necessary to include a definition of this term in its rules, the definition may not alter the statutory definition.

RESPONSE #1: The board had no intention of adopting a definition of "direct rollover" different than that contained in statute. The statutory definition addresses direct rollovers from board-administered plans to other eligible retirement plans. Direct rollovers can also occur from other eligible retirement plans to board-administered plans. The board will propose a change to the statutory definition in 2013 that addresses both types of direct rollovers.

COMMENT #2: In the amendment to ARM 2.43.2102, the statement of reasonable necessity does not address the reason for the change from 180 days to 30 days.

RESPONSE #2: The board agrees. Statements of reasonable necessity cannot be amended through the comment/response process. The board will re-notice this proposed amendment in the future and address the reason for the proposed change from 180 days to 30 days.

COMMENT #3: There are several rule amendments for which the statute implemented and/or the authorizing statute relied on by the board have not been underlined in accordance with ARM 1.3.309(3)(a)(vi).

RESPONSE #3: The board agrees. The board will underline all implementing and authorizing statutes in the future.

COMMENT #4: The section underlined for ARM 2.43.4616, 19-9-1208, MCA, was amended by Ch. 284 and not Ch. 283, L. 2009.

RESPONSE #4: The board agrees. However, this minor typographical error does not prevent the board from adopting the rule as proposed to be amended.

COMMENT #5: In ARM 2.43.4617, the statute underlined was not amended by Ch. 284, L. 2009. Perhaps the board meant a different section of law.

RESPONSE #5: The board agrees. Section 19-2-303(23), MCA, is the statute being implemented by these amendments and has been added to the list of implementing authorities.

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

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

Certified to the Secretary of State August 15, 2011.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I concerning advertising restrictions for video gambling machines, NEW RULE II concerning expiration date for video gambling machine ticket vouchers, NEW RULE III concerning software specifications for video line games, NEW RULE IV concerning special bingo sessions, and amendment of ARM 23.16.1802, 23.16.1901, 23.16.1906, 23.16.1909A, 23.16.1910A, 23.16.1920, 23.16.1924, 23.16.1927, 23.16.1931, 23.16.2001, 23.16.2101, 23.16.2109, 23.16.2401, and 23.16.2406, concerning definitions, general specifications of video gambling machines, general software specifications of video gambling machines, software specifications for video multigame machines, bonus games, automated accounting and reporting system, video gambling machine, hardware and software specifications, prohibited machines, approval of video gambling machines and/or modifications to approved video gambling machines, inspection and seizure of machines, manufacturer of illegal gambling devices – department contact information, combination of video poker, keno, bingo, and video line games, testing of automated accounting and reporting systems, definitions, and prize awards for live keno and bingo games	)	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 14, 2011, the Department of Justice published MAR Notice No. 23-16-219, regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 1252, 2011 Montana Administrative Register, Issue Number 13.

2. The Department of Justice has adopted Rule I (23.16.1829), Rule II (23.16.1903), Rule III (23.16.1907A) and Rule IV (23.16.2411) and amended ARM 23.16.1802, 23.16.1901, 23.16.1906, 23.16.1909A, 23.16.1910A, 23.16.1920, 23.16.1924, 23.16.1927, 23.6.1931, 23.16.2001, 23.16.2101, 23.16.2109, 23.16.2401, and 23.16.2406 exactly as proposed.

3. A public hearing was held on August 9, 2011. Oral comments were received from Neil Peterson for Gaming Industry Association of Montana, Inc., Mark Staples for Montana Tavern Association, and Ronda Wiggers, Montana Coin Machine Operators Association, all of whom spoke in support of the proposed rules. No adverse comments were offered at the public hearing or in writing. Mr. Peterson submitted written comments which asked the division to add the words "or animate" after the word "draw" in section 1(a) of New Rule III. Mr. Peterson stated his belief that this amendment would help to clarify and better reflect current video line games being developed both in Montana and other jurisdictions. Ms. Wiggers stated that she agreed with Mr. Peterson's proposal.

The division has considered the suggestion to add the words "or animate," but declines to adopt the suggested language at this time. It is the division's opinion that due to the very nature of video displays, the phrase "draw and display" in the software specifications for a video gambling machine includes the animation of lines of symbols or numbers. The division has approved video poker and video keno games that employ animation not only in the draw and display of poker cards and keno spots, but in the approved bonus games as well. The division further notes that the proposal here would add the words "or animate" only to the rule defining software specifications for video line games, but the phrase would not be included in the software specification for video poker (23.16.1907) or video keno (23.16.1908). Therefore, the proposed language would not tend to clarify the specifications for line game software.

4. Amendment to ARM 23.16.2109 will be effective August 26, 2011. Pursuant to HB 127, New Rule II (23.16.1903), New Rule IV (23.16.2411), and amendments to 23.16.2401, and 23.16.2406 will become effective on October 1, 2011. Pursuant to SB 361, New Rule I (23.16.1829), New Rule III (23.16.1907A), and amendments to 23.16.1802, 23.16.1901, 23.16.1906, 23.16.1909A, 23.16.1910A, 23.16.1920, 23.16.1924, 23.16.1927, 23.16.1931, 23.16.2001, and 23.16.2101 will become effective on January 1, 2012.

By:	/s/ Steve Bullock	/s/ J. Stuart Segrest
	STEVE BULLOCK	J. STUART SEGREST
	Attorney General, Department of Justice	Rule Reviewer

Certified to the Secretary of State August 15, 2011.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF BARBERS AND COSMETOLOGISTS
STATE OF MONTANA

In the matter of the amendment of ARM 24.101.413 renewal dates and requirements and 24.121.401 fees	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 26, 2011, the Board of Barbers and Cosmetologists (board) and the Department of Labor and Industry (department) published MAR notice no. 24-121-9 regarding the public hearing on the proposed amendment of the above-stated rules, at page 812 of the 2011 Montana Administrative Register, issue no. 10.

2. On June 16, 2011, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the June 24, 2011 comment deadline.

3. The department has amended ARM 24.101.413 exactly as proposed.

4. The board has amended ARM 24.121.401 exactly as proposed.

BOARD OF BARBERS AND
COSMETOLOGISTS
WENDELL PETERSEN, CHAIRPERSON

/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 15, 2011

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT RESIDENTIAL OR OUTDOOR PROGRAMS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.181.301 definitions, 24.181.402 licensing fee schedule, 24.181.501 application for registration, 24.181.505 site visits, 24.181.601 program administration, 24.181.607 program participant protection, 24.181.803 definitions - residential programs, 24.181.2101 renewals, and the repeal of 24.181.401 registration fee schedule and 24.181.502 implementation	))))))))))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On April 28, 2011, the Board of Private Alternative Adolescent Residential or Outdoor Programs (board) published MAR notice no. 24-181-5 regarding the public hearing on the proposed amendment and repeal of the above-stated rules, at page 636 of the 2011 Montana Administrative Register, issue no. 8.

2. On May 19, 2011, a public hearing was held on the proposed amendment and repeal of the above-stated rules in Helena. Several comments were received by the May 27, 2011, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's responses are as follows:

COMMENT 1: One commenter objected to the amount of the proposed increases to licensure and renewal fees, and alleged that the increases are contrary to legislative action.

RESPONSE 1: All professional and occupational licensing boards that are administratively attached to the department are statutorily mandated by 37-1-134, MCA, to set and maintain board fees commensurate with that board's costs of licensure and regulation. The board cannot set fees according to inflation, cost of living, current economic state, or the salaries of licensees.

The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this are the shift to using electronic board books instead of paper and holding some board meetings by telephone conference instead of in-person attendance.

The board notes that the licensing and renewal fee increases are proposed to comply with 37-1-134, MCA, and are commensurate with the costs of the board.

Unless both initial licensure and renewal fees are increased as proposed, the board will have a shortage of operating funds by the 2012 renewal period. The board is amending the fees exactly as proposed.

COMMENT 2: One commenter objected to the change in definition of "residential program" to include one or more program participants, so that a program with one participant must be licensed.

RESPONSE 2: The board concluded that all residential programs, regardless of the number of participants, must be licensed to ensure adequate public protection and is amending ARM 24.181.803 exactly as proposed.

4. The board has amended ARM 24.181.301, 24.181.402, 24.181.501, 24.181.505, 24.181.601, 24.181.607, 24.181.803, and 24.181.2101 exactly as proposed.

5. The board has repealed ARM 24.181.401 and 24.181.502 exactly as proposed.

BOARD OF PRIVATE ALTERNATIVE
ADOLESCENT RESIDENTIAL OR
OUTDOOR PROGRAMS
DR. JOHN SANTA, CHAIRPERSON

/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 15, 2011

BEFORE THE BOARD OF OIL AND GAS CONSERVATION AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I through V regarding oil and gas well stimulation	)))	NOTICE OF ADOPTION

To: All Concerned Persons

1. On May 26, 2011, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-157 regarding a notice of public hearing on the proposed adoption of the above-stated rules at page 819 of the 2011 Montana Administrative Register, Issue No. 10.

2. The department has adopted New Rules I (36.22.608), II (36.22.1015), III (36.22.1016), IV (36.22.1106), and V (36.22.1010) as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (36.22.608) WELL STIMULATION ACTIVITIES COVERED BY DRILLING PERMIT

(1) remains as proposed.

(2) For wildcat or exploratory wells or when the operator is unable to determine that hydraulic fracturing, acidizing, or other chemical treatment will be done to complete the well, the operator must submit a notice of intent to stimulate or chemically treat a well on Form No. 2 ~~obtain prior written approval of such activities from the board's staff at any time~~ prior to commencing such activities provided that:

(a) the written information describing the fracturing, acidizing, or other chemical treatment must be provided to the board's staff at least ~~24~~ 48 hours before commencement of well stimulation activities.

(3) and (3)(a) remain as proposed.

(b) the trade name or generic name of the principle components or chemicals;

(c) the estimated amount or volume of the principle components such as viscosifiers, acids, or gelling agents;

(d) the estimated weight or volume of inert substances such as proppants and other substances injected to aid in well cleanup, either for each stage of a multistage job or for the total job; and

(e) the ~~anticipated surface treating pressure and the~~ maximum anticipated treating pressure or a written description of the well construction specifications which demonstrate that the well is appropriately constructed for the proposed fracture stimulation.

(4) In lieu of a well specific design the ~~The~~ owner, operator, or service company may provide:

(i) and (ii) remain as proposed.

NEW RULE II (36.22.1015) DISCLOSURE OF WELL STIMULATION FLUIDS (1) The owner or operator of a well shall, upon completion of the well, provide the board, on its Form No. 4 for a new well or Form No. 2 for an existing well:

(a) through (c) remain as proposed.

(2) For hydraulic fracturing treatments the description of the amount and type of material used must include:

(a) remains as proposed.

(b) the chemical ~~compound~~ ingredient name and the Chemical Abstracts Service (CAS) Registry number, as published by the Chemical Abstracts Service, a division of the American Chemical Society (www.cas.org), for each ~~constituent~~ ingredient of the additive used. The rate or concentration for each additive shall be provided in appropriate measurement units (pounds per gallon, gallons per thousand gallons, percent by weight or percent by volume, or parts per million).

(3) To comply with the requirements of this section, the ~~The~~ owner or operator may submit:

(a) the service contractor's job log;~~,~~

(b) the service company's final treatment report (without any cost/pricing data);~~ or~~

(c) an owner or operator's ~~representative's~~ well treatment job log; or

(d) other report providing the above required information.

(4) The administrator may waive all or a portion of the requirements in (2) or (3) of this rule if:

(a) the owner or operator demonstrates that it has ~~provided~~ posted the required information to the Interstate Oil and Gas Compact Commission/Groundwater Protection Council hydraulic fracturing web site (FracFocus.org); or

(b) a successor web site to FracFocus.org or other publically accessible Internet information repositories that the board may choose to accept ~~can be accessed by the public~~.

NEW RULE III (36.22.1016) PROPRIETARY CHEMICALS AND TRADE SECRETS (1) As provided in 30-14-402 ~~82-11-117~~, MCA, where the ~~use~~ formula, pattern, compilation, program, device, method, technique, process, or composition of a chemical product is unique to the owner or operator or service contractor and would, if disclosed, reveal methods or processes entitled to protection as trade secrets, such a chemical need not be disclosed to the board or staff. The owner, operator, or service contractor may identify the trade secret chemical or product by trade name, inventory name, chemical family name, or other unique name and the quantity of such constituent(s) used.

(2) If necessary to respond to a spill or release of a trade secret product the owner, operator, or service contractor must provide to the board or staff, upon request, a list of the chemical constituents contained in a trade secret product. The administrator may request information be provided orally or be provided directly to a laboratory or other third party performing analysis for the board. Board members, board staff, and any third parties receiving trade secret information on behalf of the board may be required to execute a nondisclosure agreement.

(3) and (4) remain as proposed.

NEW RULE IV (36.22.1106) SAFETY AND WELL CONTROL REQUIREMENTS – HYDRAULIC FRACTURING (1) New and existing wells which will be stimulated by hydraulic fracturing must demonstrate suitable and safe mechanical ~~integrity~~ configuration for the stimulation treatment proposed.

(2) Prior to initiation of fracture stimulation, the operator must evaluate the well. If the operator proposes hydraulic fracturing through~~,~~ production casing or through intermediate casing, the casing must be tested to the maximum anticipated treating pressure ~~in the unsupported (uncemented) portion of the casing exposed to treating pressure~~. If the casing fails the pressure test it must be repaired or the operator must use a temporary casing string (fracturing string).

(a) If the operator proposes hydraulic fracturing though a ~~A~~ fracturing string, it must be stung into a liner or run on a packer set not less than 100 feet below the cement top of the production or intermediate casing and must be tested to not less than maximum anticipated treating pressure minus the annulus pressure applied between the fracturing string and the production or immediate casing.

(3) A casing pressure test will be considered successful if the pressure applied has been held for ~~15~~ 30 minutes with no more than ~~five~~ ten percent pressure loss.

(4) A pressure relief valve(s) must be installed on the treating lines between pumps and wellhead to limit the line pressure to the test pressure determined above; the well must be equipped with a remotely controlled shut-in device unless waived by the board administrator should the factual situation warrant.

(5) remains as proposed.

NEW RULE V (36.22.1010) WORK-OVER, RECOMPLETION, WELL STIMULATION – NOTICE AND APPROVAL

(1) remains as proposed.

(2) Well repairs, including tubing, pump, sucker rod replacement or repair, repairs and reconfiguration of well equipment which do not substantially change the mechanical configuration of the well bore or casing, and hot oil treatments do not require prior approval or a subsequent report. Acid and chemical treatments of less than ~~5000~~ 10,000 gallons~~, hot oil treatments,~~ and similar treatments intended to clean perforations, remove scale or paraffin, or remedy near-well bore damage do not require prior approval, but do require a subsequent report of the actual work performed submitted on Form No. 2 within 30 days following completion of the work.

3. The department has thoroughly considered the comments and testimony received. The comments and responses have been divided into a general comment/response section and a rule specific comment/response section. The following is a summary of the public comments received and the department's response to those comments:

GENERAL COMMENTS/RESPONSES

GENERAL COMMENT 1: Disclosure

A number of commenters support chemical disclosure, "full disclosure," or similar expressions of support for public availability of the composition of fracturing fluids. Northern Plains Resource Council (NPRC) stated that they supported disclosure of all chemicals used in oil and gas drilling, not just those used in the hydraulic fracturing process. Some commenters suggest that the board should ban hydraulic fracturing or not permit its use altogether.

GENERAL RESPONSE 1: Disclosure

The rules as drafted do require all of the components used in hydraulic fracturing, including fluids which are nonhazardous, to be listed. However, NPRC's request that all chemicals used in drilling be identified is beyond the scope of the current rulingmaking, which is specific to hydraulic fracturing and similar treatments of drilled and cased wells.

Hundreds of Montana oil and gas wells have been hydraulically fractured over the past sixty years. Over 700 modern horizontal oil wells have been fracture stimulated using current techniques without any incident of groundwater contamination either observed by the board or reported to it by any other regulatory agency in Montana. The practice of hydraulic fracturing allows recovery of oil and gas resources which could not be recovered economically in any other way. To prohibit fracturing as a completion practice is to prohibit drilling. That is an administrative action the board does not have the authority to perform, and which is not justified based upon Montana experiences with the technique.

GENERAL COMMENT 2: Notice and Baseline Water Sampling

Many commenters suggested that notice of hydraulic fracturing be given to landowners in advance of the well treatment to allow background water samples to be taken from an area within a specific radius of the well (some commenters suggested one or two miles, and one commenter suggested five miles).

Some commenters also tied chemical disclosure to background samples, indicating knowledge of the fracturing chemicals would be needed to perform the analysis. One commenter suggested notice be given one year in advance, while others suggest seven days; 30 to 60 days advance notice; and other suggested no specific timeline.

GENERAL RESPONSE 2: Notice and Baseline Water Sampling

Drilling permits outside of board delineated fields are only issued after notice has been published in a general circulation newspaper for the county where the land is located and in the Helena *Independent Record*. There is a ten-day waiting period after the notice is published before the permit is issued. This notice is in addition to the 20-day (minimum) actual written notice to the surface owner where drilling is proposed. The well site surveyor must also give notice prior to entering the land for well site location and boundary identification.

Hydraulic fracturing occurs after a well has been drilled and production casing set and cemented. There would be no particular advantage to delaying the taking of a

background water sample until the drilling operation is finished, and the board believes the mandatory notices, plus the presence of a drilling rig on the site, give an adequate opportunity to sample water sources before any fracturing stimulation might occur.

The board also considers requiring detailed chemical disclosure prior to performing a fracture stimulation to facilitate background water analysis as unlikely to accomplish the result desired by the commenters. There is no potential for groundwater contamination from hydraulic fracturing if a well has not been hydraulically fractured. Testing water for specific chemicals which have not been used is likely to be both fruitless and prohibitively expensive. The board does support disclosure of substances used in fracture stimulation after the work has been completed and the actual substances used are known with certainty.

GENERAL COMMENT 3: Trade Secrets and Confidential Business Information
Commenters asked the board to: (1) not protect proprietary or trade secret components used in fracturing fluid: (2) require disclosure of all chemicals; (3) and/or establish a process for the board to review and approve trade secrets. Several commenters added that the board "…must have access to this information in case of water well/spring contamination." Trout Unlimited (TU) and other commenters said that the need for public disclosure and the public's right to know far outweighs industry trade secrets.

GENERAL RESPONSE 3: Trade Secrets and Confidential Business Information
The board believes New Rule III (ARM 36.22.1016) adequately frames the trade secret issue for spills and other releases of fracturing components. As to the need for full disclosure (including proprietary chemicals) to determine the presence of contamination due to a fracture stimulation process, the board notes that it is not necessary to analyze a water sample for every chemical in fracturing fluid to determine a possible source of contamination. It would only be necessary to identify one or two constituents that are persistent and not naturally occurring in the groundwater to establish a premise for investigation of fracturing fluids as a potential source of contamination. As to the issue of trade secrets, New Rule III(2) (ARM 36.22.1016(2)) states: "If necessary to respond to a spill or release of a trade secret product the owner… must provide to the board … a list of the chemical constituents contained in a trade secret product."

The board recognizes the concern over proprietary chemicals and techniques and confidential business information; however, Montana has a Uniform Trade Secrets Act (30-14-401 MCA) that provides for substantial sanctions for misappropriation of intellectual property or trade secrets. Industry must comply with Occupational Safety and Health Agency (OSHA) requirements as well as U.S. EPA's Emergency Planning and Community Right-to-Know Act (EPCRA); both OSHA and EPA recognize trade secrets and have procedures to justify the claim of trade secrets. The board may, under existing authority, request copies of either the OSHA required Material Safety Data Sheets (MSDS) or a copy of the EPA's trade secret justification form if it questions the validity of a trade secret claim. The board believes it has

insufficient statutory support in current law to re-invent procedures to deal with trade secrets that have already been addressed by current state and federal law. The only clear exception is in responding to spills, discharges, or medical emergencies which the board believes are adequately addressed in proposed Rule III (ARM 36.22.1016).

GENERAL COMMENT 4: Nondisclosure Agreements

Commenters also addressed the use of nondisclosure agreements in New Rule III (36.22.1016). For example Mark Mackin comments that health information is confidential and protected and he does not see the need for a physician to sign a nondisclosure agreement. Mr. Makin further states that health officials should be obligated to disclose public health threats, implying that proposed Rule III (ARM 36.22.1016) would stop physicians from reporting potential public health problems and that the nature of any toxic, flammable, or explosive chemicals and materials as stored or mixed at or near the surface should be known to emergency services, particularly first responders.

GENERAL RESPONSE 4: Nondisclosure Agreements

New Rule III (ARM 36.22.1016) is only intended to address emergency treatment of individuals exposed to certain chemicals under limited circumstances (likely to be workers in immediate proximity to the worksite) where the board's regulatory authority may provide a process to expedite appropriate response. The board asserts no jurisdiction over the process of determining public health risks and does not believe the limited applicability of Rule III impedes the process. The board also believes that a proper nondisclosure agreement protects both the recipient of protected information as well as the owner of the information. EPA's EPCRA requirements already include providing chemical inventories to the State Emergency Response Commission (in Montana that is Disaster and Emergency Services and Montana Department of Environmental Quality), Local Emergency Planning Committees (LEPC), and local fire departments.

GENERAL COMMENT 5: FracFocus Web Site and Data Availability

Commenters suggested that the board avoid use of a national hydraulic fracturing information web site in favor of a site hosted and maintained by the board and/or state government in general. The Montana Environmental Information Center (MEIC) and other commenters said that the board's web site is the central repository and the rules should require operators to submit electronically to the web site. One commenter also suggested use of name, location, and permit number.

GENERAL RESPONSE 5: FracFocus Web Site and Data Availability

The board's technical staff maintains the board web site. Data is received in many formats and the permanent official records are the paper records maintained in Billings and Helena. Those records are open for public inspection and copying. The oil and gas data system captures well information, production filings, board orders and other key elements of well and regulatory data and makes them available without charge to the public. The staff has recommended the use the FracFocus web site, which is unique in the secure gathering of state specific hydraulic fracturing

data, putting data in a logical format, and through use of a data template, insuring the data is consistent and timely. Web site hosting is transparent to the user and whether the site is hosted in Helena, Billings, or elsewhere is immaterial.

FracFocus is hosted at a commercial web facility in central Oklahoma with secure virtual servers, back-up software and hardware, and back-up power and communications network. The site is at least as secure and reliable as any state-owned site and the board does not incur any cost in using FracFocus. Additionally, this site is managed by the Ground Water Protection Council (GWPC) and two of the board's staff are active in GPWC data management projects and have direct influence over the design and use of the system. There would be significant unbudgeted costs to design and develop a site as comprehensive as FracFocus solely with board funding.

Staff will continue to work with the Interstate Oil and Gas Compact Commission (IOGCC) and GWPC to improve the data template as well as making fracturing information more user friendly; to make available on the board's web site information from those operators not using FracFocus (or to develop a procedure for the board staff to submit the data on behalf of less active operators); and to plan for an alternative system if FracFocus does not meet long term needs.

Regarding the use of name, location, and permit number, the board uses the American Petroleum Institute (API) well number as the unique well identifier, not the sequential permit number. FracFocus allows searches by state, county, operator name, well name, or well API number. The search function works even if the only available data is the name of the state in which a hydraulically fractured well is located. The other criteria are used to narrow the search results. API well numbers can be found on the board's Webmapper application, from the online data portion of the board's web site, and from the weekly letter posted on the web site that lists all new permits.

GENERAL COMMENT 6: Other States and Issues

Several commenters discussed Pennsylvania and New York shale gas issues, Wyoming's Pavilion and Clark area issues and similar issues portrayed in the "Gaslands" movie. Concerns were also expressed by some about coal bed methane. The Coal Bed Methane Protection Act Committee suggested the board include special provisions for chemical disclosure for these seeking compensation under 76-15-902(5). Some commenters also suggested the board factor in consideration of other state fracturing rules, recently passed Texas statute, and the possibility of future federal rules.

GENERAL RESPONSE 6: Other States and Issues

Montana has had no incidents of hydraulic fracturing contaminating underground sources of drinking water either discovered by or reported to the board. Biogenic natural gas, which is composed almost entirely of methane, occurs naturally in coal seams and organic rich shale. Many aquifers in coal country are either composed partially or entirely of coal, or are in intimate contact with coal. The presence of

methane in water is likely in those areas and its presence is generally not associated with natural gas or oil development. There have been allegations of harm from exposure to hydraulic fracturing chemicals, yet there is no state or federal confirmation available to the board.

Groundwater contamination in the Clark, Wyoming, area was the result of an underground blowout at a well during drilling operations and was not associated with fracture stimulation technology. The Wyoming Department of Environmental Quality includes the following statement on its web site: "…There is no evidence that fracking has caused any water quality problems in Wyoming…", and "…In Pavillion, oil and gas development has been ongoing for about 50 years. It should be noted that in both Pavillion and Pinedale, domestic water wells have been drilled into shallow intervals containing natural gas…".

Regarding the comments from the Coal Bed Methane Act Protection Committee, hydraulic fracturing of coal seams has proved unnecessary to produce CBM in Montana. Coal seams currently producing in the state have very high natural permeability, which does not need artificial enhancement. The board is not inclined to make rules for specialized circumstances unlikely to occur. See General Response 2.

Board staff has met with officials of the Texas Rail Road Commission, Oklahoma Corporation Commission, Michigan Office of Geologic Survey, and the Nebraska Oil and Gas Commission about proposed hydraulic fracturing rules. Montana's rules and Texas statute are currently at least as comprehensive as any other state disclosure approaches. U.S. EPA is conducting a study of hydraulic fracturing and regulatory approaches, as are the Bureau of Land Management, and the U.S. Department of Energy. The board cannot predict the outcome of these efforts nor the timetable for any proposed rulemaking by others. Importantly, the board cannot predict the regulatory program(s) which the federal government might choose to use to implement any rules it proposes. The board is proposing rules which it believes adequately address the issues which can be addressed at this point in time.

GENERAL COMMENT 7: Additional Hearings and Affected Communities
Commenters suggested that the board should also hold a hearing in Park or Sweet Grass counties in addition to the one held in Sidney.

GENERAL RESPONSE 7: Additional Hearings and Affected Communities
The board has a statutory obligation to hold a public hearing in the community likely to be impacted the most by its proposed rules. Since 2007, Richland County has had 260 oil wells completed and hydraulically fractured as part of the well completion process. That averages out to one fracture stimulation job performed every week for the past five years. From 2007 to date, eleven total wells were permitted by the board in Park County: six were dry holes; four had the permits expire; and one was completed, but does not produce. Seven wells have been permitted in Sweet Grass County: four permits have expired with the wells never drilled; one well was a dry hole; one well was completed as shallow gas well in an existing (conventional) gas

field; and one was completed as a shale well that has never produced. There have been no new drilling permits issued in either county in the last year.

Park and Sweet Grass counties are well represented in the comments received. The board has considered all of the comments and does not consider written comments less valuable than those presented at a hearing. The board chose to hold a public hearing in Sidney because it predicted with certainty that hydraulic fracturing well stimulation would occur regularly and often in the northeastern counties of the state; a prediction it could not make for any other part of the state with the same certainty.

GENERAL COMMENT 8: Future Rulemaking

Several commenters suggested amendments to cover other subjects related to hydraulic fracturing, but which were not originally proposed by the board as part of this rulemaking. For example, Bradly Shepard and Peter Fox suggested the board review requirements for closed system drilling. Rep. Kathleen Williams (HD 65) commented on requiring that the source of water used in fracturing be disclosed as well as the entity that might treat the wastewater. Rep. Williams suggested disclosure of depth and thickness of permeable/water zones be disclosed under the proposed rules.

Potential federal rules, EPA regulation of the use of diesel fuel in fracturing fluids, bonding requirements, transportation of fracturing fluids to the well and spill preparedness were also mentioned by several commenters.

GENERAL RESPONSE 8: Future Rulemaking

While these issues may have merit for future rulemaking, the board's current effort is to appropriately regulate the chemical disclosure, well integrity, and operational safety issues related to hydraulic fracturing and to clarify how those activities are permitted. While outside the scope of this rulemaking, the board's existing rules do not allow long-term storage of waste fluid in pits, and do require either closed systems or total removal of pits' contents in irrigated farmlands, areas of high groundwater and in floodplains.

The board has no regulatory authority over water use and the subject of the board regulating or requiring water sources is well beyond current rulemaking. Since most produced water in the Williston Basin—including flow back water—is highly mineralized, virtually all of the water is re-injected through permitted injection wells.

Current board rules require the owner or operator to run an electrical, radioactivity, or similar petrophysical log or combination of logs sufficient to determine formation tops from total depth to the base of the surface casing unless waived by the board administrator. "Electric" logs are a permanent part of the board's well files which are not confidential and are open for public use.

The board has bond rules that apply to all wells, regardless of type of well completion, in existing rules. Transportation is not under the board's jurisdiction, and

the effect of any federal rulemaking is unknown at this time, and involves a time schedule beyond the board's ability to predict.

The board is taking a specific direction with its rules that is unlikely to conflict with other jurisdictions; it has chosen to limit the scope of the rules to those necessary to address chemical disclosure, well integrity and safety, and to clarify hydraulic fracturing permitting process.

RULE SPECIFIC COMMENTS/RESPONSES

NEW RULE I (36.22.608)
COMMENT 1:
A number of commenters, including Devon, Newfield, and the Montana Petroleum Association (MPA) suggested that some fracturing design data requested as part of the drilling permit is difficult to determine ahead of the job being proposed.

Newfield, MPA and others comment that the anticipated and the maximum treating pressure in New Rule I(3)(e) (ARM 36.22.608(3)(e)) would be difficult to estimate at the permit stage of a well. TAQA commented that there should be casing design requirements for fracture stimulated wells and the maximum treating pressure should not exceed 80 percent of the maximum casing pressure rating. TU and Park County Environmental Council suggest Rule I(3)(b) (ARM 36.22.608(3)(b)) be reworded to require the trade name or generic name "…of the components or chemicals to be used in the…process". One commenter (Welter) suggested that disclosing procedures and products on the board's Form 2 should be sufficient and this could be done in a timely manner prior to the fracturing procedure. MEIC, NPRC, and several others suggested that 24 hours is too short a timeframe for the process of modifying the drilling permit to include fracture stimulation. Finally, comments from MPA, Devon, Western Energy, and others suggest the requirements in Rule I (e)(i) and (ii) apply to the entire rule, not just to paragraph (3). NPRC also suggested that chemical abstract numbers be associated with the pre-frac chemicals.

RESPONSE 1:
Where actual formation parameters are needed to determine the design, the well may need to be drilled, logged, and evaluated before a fracture can be designed. The board and staff understand that stimulation treatments are customized designs and the final design of the treatment may not be known at permitting. The request for basic information at the time a well is permitted is to assist staff's analysis of impacts anticipated from drilling.

The board agrees that the apparent specificity required in New Rule I (ARM 36.22.608) may be problematic. Requiring CAS numbers for components would exacerbate the problem. At the same time, the board believes certain information about proposed well completion and anticipated stimulation activities must be available to the operator sufficiently ahead of time to request contractor bids, to inform partners of anticipated costs and to prepare well site locations and ancillary

facilities for potential stimulation operations. The board agrees that Form No.2, Sundry Notice, is the appropriate written notification of a change in plans, including well stimulation requests. The board also agrees that 24 hours, which was originally proposed to allow an opportunity to have a field inspector present during well treatment operations, is too short for processing a written notice and has increased the time to 48 hours.

The request for requesting treating pressure and maximum treating pressure data is to review well construction and potential pressure limitations of the design. The board appreciates TAQA's comment about pressure ratings and XTO's comment about requesting design specifications that provide confidence the well will be properly constructed for hydraulic fracturing stimulation.

During formatting of proposed Rule I (ARM 36.22.608), the sections (3)(e)((i) and (ii) were placed under (3) but were intended to apply to the entire New Rule I. The rule has been amended to reflect the original intent and to read that operators may file analog fracture designs from previously stimulated wells in the area or prefiled generic designs, which form the basis for pre-frac design for a particular well.

NEW RULE II (36.22.1015)
COMMENT 2:
Comments were received from MPA, Halliburton Energy Services, Inc.(HESI), Devon, Samson, Newfield and others regarding the language in proposed New Rule II (ARM 36.22.1015), which appears to require additive level disclosure, but requires the Chemical Abstract Number (CAS) which is only appropriate at the component level. MPA and Newfield suggested dropping the requirement for CAS numbers and require disclosure at the additive level. Devon and Samson suggested retaining CAS numbers and clarifying the substances they refer to (the chemical components of the additives). HESI suggest retaining CAS number but requiring disclosure of those constituents listed on an additive product Material Safety Data Sheet (MSDS). HESI correctly interprets the proposed rule as requiring disclosure of all chemicals, including nonhazardous ingredients.

Commenters also addressed use of the FracFocus.org web site and suggested the Rule require the board administrator to waive reporting to the board if the FracFocus.org site (or a successor site) is used. Other commenters suggested that the board not use FracFocus.org, but use its own site.

RESPONSE 2:
The board thanks the commenters for their input. However, the board and its staff believe the board has an obligation under existing law to know the composition of all materials injected to enhance the recovery of oil or natural gas, including nonhazardous substances.

The board believes it must retain the authority over its reporting requirements. While it supports FracFocus, it must also develop rules which remain in effect whether or not there is a desirable reporting alternative. If no web site meets, or one only

partially meets the disclosure needs, the board must continue the direct requirement. The board appreciates Samson's comment about successor web sites, and has clarified the rule to recognize that it may accept other sites if they meet the board's disclosure needs.

The board may use its own web site to deliver electronic images of information submitted by companies; however, the board staff would not recommend developing a database of chemical disclosure data as was suggested because of the expense in both development and maintenance and the limited value such data represents to the regulatory program. Staff is participating in the ongoing design and management of FracFocus, and is confident the site will continue to grow more useful to the public. Also, see General Response 5.

NEW RULE III (36.22.1016)
COMMENT 3:
In addition to the general comments received about this proposed rule (see "General Comments/Responses"), HESI provided extensive comments about trade secrets and the statutes and case law in Montana. Devon offered clarifying language. While Park County Environmental Council objects to medical personnel being required to execute nondisclosure agreements, MPA, and Western Energy Alliance suggest such agreements be signed by any party receiving trade secret information.

HESI suggested the dependence of New Rule III (ARM 36.22.1016) on 82-11-117, MCA, may be seen to narrow the trade secret definition established in 30-14-402, MCA, and that Montana courts have already adopted the later standard.

RESPONSE 3:
Section 82-11-117, MCA, was adopted several years ago in support of the Underground Injection Control Program and may have limited applicability to hydraulic fracturing. Because 82-11-117, MCA, addresses injection into state waters and the purpose of the proposed hydraulic fracturing regulations is to prevent contamination of state waters, the board agrees that this code cite may be misleading. The rule's exemption for board or staff or third parties working for the board from executing a nondisclosure agreement was inadvertent. The rule has been amended to cite 30-14-402, MCA.

NEW RULE IV (36.22.1106)
COMMENT 4:
Continental Resources (Aman) commented at the hearing that the proposed rule appeared to limit pre-fracturing testing by means other than the pressure test and requiring the casing pressure test be run even if the operator determined the use of a fracturing string was necessary. Newfield interprets New Rule IV(2) (ARM 36.22.1106(2)) as ignoring the contribution of cement to the pressure integrity of the casing. HESI commented that the concept of mechanical integrity in the context of section (1) of Rule IV is ambiguous. MPA, Western Energy Alliance, and others comment that 15 minute/5 percent pressure loss is too stringent. Northern Plains suggest the casing pressure test should be 110 to 150 percent of the anticipated

treating pressure. TAQA expressed concerns that wells can continue to be fracture treated down production casing, if appropriately configured, without the use of a fracturing string. Other commenters expressed concerns regarding the use of remotely controlled valves, and one comment was received about automatic pressure shut-downs on pump trucks as well as the use of pressure relief valves.

RESPONSE 4:
The board does not wish to preclude the operator from running other tests or tools to evaluate the need for a fracturing string, and does not intend the rule preclude the use of properly cemented production casing as the conduit for stimulation treatments. The board agrees that the broad requirement to demonstrate mechanical integrity may be ambiguous, and also generally agrees with the concept of requiring remotely controlled shut-down valves. Since these rules apply statewide, automatic shut-in valves may serve little purpose in those parts of the state with predominately low-pressure and limited deliverability wells. The 15-minute/5 percent loss test was taken from the board's mechanical integrity requirement for injection wells and is more stringent than many other states. The board appreciates that testing casing-tubing-packer mechanical integrity in an injection well that may operate continuously for five years without further testing is different from testing the casing of a well that will see treating pressure for a few hours or days. The purpose of the casing pressure test is to determine if there are leaks in the system being tested. A 30-minute/10 percent loss test is adequate to determine if significant leaks exist. There is risk of weakening the cement-casing bond by testing significantly above the pressure needed to determine significant leakage. The board's staff does not support testing production or intermediate casing above the maximum anticipated treating pressure.

NEW RULE V (36.22.1010)
COMMENT 5:
Devon suggests modifying New Rule V (ARM 36.22.1010) to allow a 48-hour notice of activities covered by rule V and allowing work to proceed at the expiration of the 48-hour notice. NPRC suggests requiring a subsequent report of the activities in (2) within 30 days. MPA, Western Energy Alliance, and others suggested increasing the amount of treatment materials that do not require notice in (2) from 5000 gallons to 10,000 gallons.

RESPONSE 5:
The essential difference between the activities covered in New Rule V (ARM 36.22.1010) and those covered under New Rule I (ARM 36.22.608) is that all of the New Rule V (ARM 36.22.1010) actions are performed on existing wells and are not part of a drilling permit. The reperforating, recompletion, and reworking activities in (1) trigger a review of well spacing/setback requirements that may take more than 48 hours to complete. The staff ordinarily processes these items quickly, but would not want an operator committed to well work that would result in the well being in violation of other board rules.

The board agrees with MPA that one twin trailer-truck load of material is a reasonable limitation, and with Northern Plains on the issue of requiring a subsequent report. The board has moved the hot oil treatment exemption into the first sentence of section (2), as hot oil treatments customarily involve small volumes of oil from the lease being treated, but will require a subsequent report for acid and chemical treatments.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy Butler
TOMMY BUTLER
Rule Reviewer

/s/ Terri Perrigo
TERRI PERRIGO
Executive Secretary
Board of Oil and Gas Conservation

Certified to the Secretary of State August 15, 2011.

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

In the matter of the amendment of ARM 37.85.212 and 37.86.105 pertaining to the resource based relative value scale (RBRVS) and the reimbursement for physician administered drugs	))))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-541 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 865 of the 2011 Montana Administrative Register, Issue Number 10. On July 14, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-541 pertaining to the amended notice of public hearing and extension of comment period of the above-stated rules at page 1287 of the 2011 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: Senator Jason Priest, Senator Mary Caferro, and hospital representatives commented that all physicians, at a minimum, should be paid the same Medicaid rates they received in 2010.

Response #1: Section 53-6-124(7), (MCA), defines the resource based relative value scale (RBRVS) to mean the Medicare resource based relative value scale contained in the physician's Medicare fee schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services. Senate Bill 241 (SB241) did not change the definition of RBRVS.

The RBRVS system is used nationwide by most health plans, including Medicare and most state Medicaid programs. The system was developed for Medicare by CMS and the American Medical Association (AMA) and implemented in 1992. In 1997 the Montana Department of Public Health and Human Services (the department) adopted an RBRVS based fee schedule as the basis for Montana Medicaid's payment for almost all services provided to Montana Medicaid clients by physicians, mid-level practitioners, therapists, and other individual practitioners. Montana Medicaid has used an RBRVS system to calculate provider rates since 1997.

The relative value unit (RVU) component of the RBRVS system is revised annually by CMS and the AMA. The RVUs for 2011 were adopted by CMS at 75 Federal Register 228, 73504 on November 29, 2010 and corrected at 76 Federal Register 7, 1670 on January 11, 2011. An RVU is a numerical value assigned to every medical procedure based on its relative value in relation to other medical services. There are thousands of medical procedures identified by current procedural terminology (CPT) codes. RVUs are added for new procedures and the RVUs for existing medical procedures may increase or decrease from year to year. The department annually proposes to amend ARM 37.85.212(1)(i) to adopt CMS' and the AMA's current RVUs.

The RBRVS system for setting rates uses the following formula to set a reimbursement rate for a medical procedure:

RVU * Conversion Factor * Policy Adjuster (if any) = Reimbursement rate

The department annually calculates conversion factors for allied services, mental health services, and anesthesia services. These conversion factors are calculated by dividing the Montana Legislature's appropriation for Medicaid clients' health care during the upcoming State Fiscal Year (SFY) by the estimated total units of health care, expressed as total RVUs paid, to be provided during the upcoming SFY. The resulting quotient is the conversion factor. The conversion factor for licensed physicians is described in 53-6-124 and 53-6-125, MCA.

The new language of 53-4-125(2)(a), MCA enacted by the Legislature in SB241 is: "For state fiscal years 2011 through 2013, the conversion factor is $40.09. The conversion factor may be adjusted by the department in order to maintain reimbursement, at a minimum, at the fiscal year 2010 reimbursement rate." (Emphasis added). This language does not require that every physician be paid the same fee for a procedure as was paid in SFY 2010. It requires that the reimbursement rate in the aggregate be maintained at the 2010 reimbursement rate.

The 62nd session of the Montana Legislature in House Bill 2 (HB2) appropriated the Medicaid program the same amount for physician services in SFY 2012 that it appropriated in SFY 2010 with an adjustment for increased caseload only. The Legislature intended in the aggregate to reimburse physicians the same amount of money in SFY 2012 that Montana Medicaid paid in SFY 2010.

The medical procedures identified in RBRVS fee schedules are not static. As explained above, the RBRVS schedule is modified every year to take into account new medical procedures and to implement changes in the relative value units of one procedure in relation to other procedures. The RBRVS system provides a method for a U.S. health care plan to calculate the reimbursement it will pay for medical procedures during a year in the aggregate. Like other health care plans, the department annually determines Montana Medicaid's RBRVS reimbursement rate in the aggregate. If the department were required to use the RBRVS system to

accomplish two goals - one, calculate the 2012 reimbursement rate in aggregate at the 2010 appropriation level and two, maintain each fee in the schedule at a level no lower than the 2010 fee - it would have to disregard new procedures and changes in RVUs for procedures and maintain the 2010 Medicare RVU scale. Using the 2010 Medicare RVUs scale in SFY 2012 would result in inaccurate fees that would be out of compliance with the definition of "resource based relative value scale" at 53-6-124(7), MCA.

The new statute specifically refers to reimbursement in the aggregate "at the fiscal year 2010 reimbursement rate", not to individual fees for a particular procedure.

The department believes that the approach proposed in this rule meets the intent of SB241 to not lower reimbursement from 2010, while continuing to also meet the intent of the remaining portions of the MCA by keeping the Medicare RBRVS in place. While this approach will pay some individual services and provides an amount that is less than or more than what was paid historically, the department has made every effort to assure that the aggregate payments will remain the same for physicians.

Comment #2: Hospital representatives commented that SB241 does not direct the department to separate or differentiate between services provided by physicians who are hospital based (hereafter "facility-based providers") and physicians who are office based (hereafter "non-facility-based providers"). SB241 states that the conversion factor may be adjusted by the department in order to maintain reimbursement, at a minimum, at the SFY 2010 rate. The comment suggests this statement specifically and clearly indicates the legislative intent that all physicians should be treated the same, regardless of facility or non-facility-provider status. The commenter also commented that all physicians should, at a minimum, be paid at the same Medicaid rate they received in 2010. The commenter states that while Medicaid is moving to the 2011 RBRVS schedule, several other payers like Blue Cross-Blue Shield of Montana and Allegiance Benefit Plan Management will remain on the 2010 schedule, creating an administrative burden for hospitals to manage two payment schedules.

Response #2: ARM 37.85.212 is necessary not only to implement the legislative action taken in SB241, but also to implement annual rate changes required by 53-6-124 through 127, MCA. Section 53-6-124(7), MCA defines the RBRVS to mean the Medicare resource based relative value scale contained in the physician's Medicare fee schedule adopted by the CMS.

Since 1997, Montana Medicaid has used the RBRVS system as a basis for paying most physician and midlevel services and updates the RVUs annually to provide consistency for providers enrolled with Medicaid. In 2003, the department recognized Medicare provider-based entities and adopted enhanced payments to hospitals for provider-based physicians (hereafter "provider-based clinic providers"). RBRVS has always differentiated payments for providers based on the place the service is provided by delineating separate and distinct rates for services provided in

an office or facility setting. Payment for services provided in an office setting normally represent total payment for physicians' work (physician time, difficulty, judgment, and technical skill), practice expense (office overhead, ancillary personnel, and supplies), as well as malpractice insurance RVUs. Facility-based provider payments are normally lower because the hospital receives a separate payment for practice expenses. The RBRVS method was designed to address practice costs in office and facility settings.

In 2010, CMS began using different practice expense data to calculate the RVUs. The new data from the physician practice information survey resulted in significant changes to the practice expense values for many services. For Montana Medicaid to maintain aggregate payment levels for physician services at the same level as 2010, the Montana conversion factor was adjusted to reflect the overall increase to physician practice expenses and maintain payments within the appropriated amount. In order to minimize the impact of the significant changes to practice expense, the department chose to follow Medicare policy to transition these changes over a four-year period, phasing in the impact from 2010 through 2013.

Comment #3: Hospital representatives commented that the action taken by the department in this rule treats facility-based providers differently from non-facility-based providers and creates a bifurcated system that is bad public policy.

Response #3: Non-facility-based providers do receive a higher reimbursement for their physician services. However, they do not receive a second facility payment. Facility-based providers receive two payments,-a service payment and a facility payment. This reimbursement differential has been in place for many years. Beginning seven years ago, the department also adopted provider-based reimbursement methodology. This method was adopted to increase reimbursement for services performed in a provider-based clinic and provide a guaranteed level of access to services. Elimination of this differentiation would lower total reimbursement to facility-based providers, creating a larger disparity in the reimbursement received for services performed at provider-based clinics.

Comment #4: A representative of the Association of Montana Health Care Providers (MHA) and hospital representatives commented that they are concerned that the department has failed to recognize the nationwide trend of physicians migrating from non-facility-based practice to facility-based practice. A large portion of the overall decline in reimbursement comes from providers shifting to the facility setting. It is unlikely that Montana will experience a flat Medicaid utilization level given the requirements specified under the health care reform regulations.

Response #4: The department recognizes the national trend of physicians migrating to facility-based employment and also recognizes that any savings in the physician reimbursement resulting from this shift will be offset by increases in reimbursement to facilities for their facility payment. The department calculated its model based on historical claims data that specifically address changes in the conversion factor and RVUs, and eliminates caseload adjustments from the calculation of the conversion

factor. The department does not believe utilization will be flat. Increases related to changes in utilization are not included in RBRVS modeling as they integrate variability into the calculation of a budget-neutral conversion factor. Caseload adjustments are budgeted separately.

Comment #5: A representative of MHA and hospital representatives commented that the proposed fee schedule adversely impacts facility-based providers due to a decrease in the RVUs for practice expense in facility settings. The department should adopt one or more strategies to mitigate these changes.

Response #5: Section 53-6-125, MCA requires the department to use the RBRVS system adopted by CMS. The RBRVS system has separate fees for services performed in the facility and nonfacility settings. The cause of the change is a change in the practice expense component of RVUs. Montana Medicaid and other health plans do not determine how hospitals respond to the change in RVUs or how hospitals determine the compensation of their employees.

Concerns regarding inequities of fees that may occur based on the facility or office setting may be directed to CMS. However, the department addressed this inequity when it adopted the concept of provider-based clinics several years ago. Provider-based clinics are not a required service of Medicaid agencies and most states have not adopted this concept. Services performed in provider-based clinics are allowed an additional facility payment, and in aggregate act to enhance reimbursement for services performed there. No other funding is available at this time to further enhance fees for services performed in a facility setting.

Comment #6: A hospital representative commented that administering two fee schedules will be burdensome for providers.

Response #6: The department understands that this burden will be in place, regardless of the department action, due to the need to administer fee schedules for Medicare and other insurers.

The department believes updating RVUs annually maintains the accuracy and defensibility of this reimbursement system. This reimbursement system allows the department to react to changes in the health care system and is a useful tool in assuring that rates do not become outdated and obsolete. Without this capability, the system would not be able to reflect changes in technology and innovation, obsolescence of certain activities, and correction and balancing necessary to maintain pace with advances in medicine. The department believes that primary care services have been historically undervalued in the system and is encouraged to see that the value of these services is being recognized relative to the value of other services. The department further believes that changes occurring to the relative values are changes in the right direction and represent appropriate health policy for Medicaid.

Comment #7: A representative of MHA commented that the department should adopt a policy modification to smooth transition of this change.

Response #7: The department agrees with this comment and has implemented a four-year transition period. This transition was initiated in 2010 and will continue through 2013, blending the impact of the practice expense changes at 25% per year over this period.

Comment #8: A hospital representative requested that the department undertake a fiscal impact analysis for the five largest hospitals in Montana providing services to Medicaid eligible individuals.

Response #8: The department explained the analysis and rate-setting model to interested associations and their members and agreed to consider revisions to its model and recalculate rates based on input received through these discussions. The department provided necessary data to providers so that individual providers could perform their own analysis. Completing specific analysis for some providers without making the same analysis available to all would not be equitable. Given the large number of providers in this group, the department made every reasonable effort to provide data necessary for each provider to evaluate and perform individual analysis without differential treatment between independent and facility-based providers.

Comment #9: A hospital representative questioned the reasonable necessity for the department to implement these provider rate reductions.

Response #9: Provider rates will be reduced for allied service and mental health service providers only, due to provider rate increases that went into effect in fiscal year (FY) 2010, were held constant in FY 2011, and were paid for with one-time-only (OTO) funding appropriated by the 61st Legislative session in 2009. This OTO funding was not included in the base budget for FY 2012 and the funds were not appropriated by the 62nd Legislative session in 2011. The net result is a funding decrease of approximately 2% for allied service and mental health service providers. Failure to reduce these providers' fees will overspend the Medicaid appropriation.

Physician service and anesthesia service providers will not receive a payment reduction because they did not receive this 2% OTO payment increase in SFY 2010 or SFY 2011. Physician service providers received a 6% increase in conversion factor in SFY 2010. The increase, coupled with changes in RVUs and policy adjustors, equated to a 12.7% increase to rates in aggregate for physician providers.

Comment #10: A representative from MHA and hospital representatives commented that the proposed fee schedule will underspend appropriations.

Response #10: Fees for physician and anesthesia services are to remain at SFY 2010 levels. Allied and mental health services fees are reduced by 2% due to the loss of one-time funding sources. The department remodeled its claims data for the

proposed SFY 2012 fee schedule and determined the conversion factors for physicians and mental health services can be increased slightly from that published in the first notice. This change is reflected in the final rule.

Comment #11: A hospital representative commented that the proposed fee schedule will reduce aggregate Medicaid physician reimbursement for a particular facility significantly more than the 2% the department estimates.

Response #11: The department proposes to reduce reimbursement to allied and mental health providers by 2% and to keep physician and anesthesia reimbursement at SFY 2010 levels. The reimbursement to a particular facility will be influenced by practice patterns and changes to RVUs. These changes are budget neutral when reviewed for all physician providers.

Comment #12: The Montana Medical Association commented that RBRVs system establishes specific rates for facility-based and non-facility based providers. The AMA opposes a policy adjustor to equalize the rates.

Response #12: The department agrees with the commenter.

Comment #13: A Montana Children's Initiative representative objected to section 4 of the Notice of Public Hearing on Proposed Amendment, Statement of Reasonable Necessity, and the department rationale that the impact of the rate changes on efficiency, economy, quality of care, and access to Medicaid services were considered and the department concluded that the rates are still sufficient to meet the requirements of 42 USC 1396a(a)(30)(A). The commenter requested the department to provide the process and results of this consideration.

Response #13: Montana Medicaid fees were compared with Medicare and surrounding states' fees. Montana Medicaid fees were found to be comparable and reasonable.

Comment #14: Senators Priest and Caferro and hospital representatives commented that the proposed rule changes do not comply with the intent or the plain language of SB241. They state that the legislative intent of SB241 is for all physicians to be treated the same, regardless of employment status, and that all physicians should at a minimum be paid the same Medicaid rates they received in SFY 2010. They request that the department explain what ambiguity exists in SB241 and what authority the department has to set rates that may vary from SFY 2010 rates.

Response #14: The department reviewed SB241 and believes the proposed amendment conforms to the requirements of the bill. The department has the same level of appropriations for physician RBRVS reimbursement as in SFY 2010. There have always been differentiating reimbursement levels for RBRVS providers practicing in facility and non-facility settings. Fees for facility-based providers will generally be less than non-facility based providers. A provider practicing in an office

setting will receive reimbursement for one claim. This claim must capture all expenses incurred in the office setting. Providers practicing in a facility setting will submit separate claims for professional charges and facility expenses resulting in two claim forms and two payments.

The new language of 53-6-125(2)(a), MCA, states: "For state fiscal years 2011 through 2013, the conversion factor is $40.09. The conversion factor may be adjusted by the department in order to maintain reimbursement, at a minimum, at the fiscal year 2010 reimbursement rate". This language must be read in conjunction with the definitions in 53-6-124, MCA, including the definition for resource based relative value scale, and 53-6-113(3), MCA.

The Legislature has established a system for setting Medicaid rates. The intent of the statute is to set the rates for all services, including physician services. Physician services are based on the RBRVS system and the factors listed in 53-6-113(3), MCA. The department has implemented the new language of SB241 to be consistent with all the provisions of Title 53, chapter 6 adopted by the Legislature.

Comment #15: A Montana Children's Initiative representative commented that the Medicaid Mental Health and Mental Health Services Plan fee schedules were inaccurate and said the department should conduct a second hearing and allow additional time for comment.

Response #15: The Medicaid Mental Health and Mental Health Services Plan fee schedule was inaccurate and has been corrected. Those fee schedules were not proposed as part of ARM 37.85.212 which are RBRVSs fee schedules. The erroneous fee schedules were published as an amendment to ARM 37.87.901 in MAR Notice 37-543. The department conducted a second hearing on the Medicaid Mental Health and Mental Health Services Plan fee schedules and allowed additional time for comment.

Comment #16: The Children's, Families, Health, and Human Services Interim Committee, by letter dated June 22, 2011, requested that the department schedule a second hearing and extend the comment period on ARM 37.85.212.

Response #16: The department complied with the request of the committee. Two public hearings were held on the proposed rule change and public comments were accepted through July 25, 2011.

/s/ John Koch
Rule Reviewer

/s/ Laurie G. Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 15, 2011

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

In the matter of the amendment of ARM 37.86.2224, 37.87.808, 37.87.901, and 37.87.903 pertaining to Children's Mental Health Bureau rate reduction	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-543 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 874 of the 2011 Montana Administrative Register, Issue Number 10. On July 14, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-543 pertaining to the amended notice of public hearing and extension of comment period of the above-stated rules at page 1290 of the 2011 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: The department received several comments, including a letter from The Children's, Families, Health, and Human Services Interim Committee, concerning the draft fee schedule posted May 25, 2011, on the Children's Mental Health Bureau web site which appeared to reduce outpatient mental health therapy codes significantly more than the proposed 2% rate reduction.

Several outpatient mental health providers expressed concerns that if the posted draft rates were implemented, the changes would adversely impact the mental health service system. Several commenters expressed concern the rates would reduce Medicaid recipients' access to community-based outpatient mental health services, resulting in higher suicide rates, increased state hospital and psychiatric residential treatment facility admissions, and overall increased costs. Most commenters were concerned specifically about psychotherapy rates. Several commenters were concerned the rate would decrease the number of community-based therapists accepting Medicaid and MHSP. A few commenters expressed concern that the rate reduction would result in mental health professionals losing employment. One commenter was concerned that small providers would be impacted more than larger providers.

Response # 1: The department assumes commenters are referring to amended ARM 37.87.901 which incorporates the Children's Mental Health Fee Schedule. The department posted the proposed Children's Mental Health Fee Schedule on the Children's Mental Health Bureau web site on May 26, 2011, to provide adequate notice of the proposed Children's Mental Health rates. The draft fee schedule was incorrect and reduced outpatient therapy services more than was intended by the department. The fee schedule was withdrawn, corrected, and re-posted at www.mtmedicaid.org. The department conducted a second hearing and allowed additional time for comment. There were no attendees at the second hearing for this rule and the department believes the concerns have been addressed.

Comment # 2: Two commenters expressed concerns about the method the department used to communicate proposed reimbursement rates to providers. There was confusion as to the location of the proposed fee schedule.

Response #2: The department assumes the commenters are referring to the proposed amendment to ARM 37.87.901 which incorporates the Children's Mental Health Fee Schedule. For consistency, the department agrees the communication method for the proposed fee schedules could be improved and has agreed to post all proposed fee schedules at www.mtmedicaid.org.

Comment # 3: One commenter expressed the concern that providers who are not licensed mental health centers are excluded from providing mental health center services such as Comprehensive School and Community-Based Treatment (CSCT).

Response # 3: The department believes this concern is outside the scope of the proposed changes in MAR 37-543.

Comment #4: One commenter expressed support for the department's proposed rule change to eliminate the prior authorization and unscheduled revision requirements for Targeted Case Management services.

Response #4: The department appreciates the commenter's support for the proposed rule change.

Comment # 5: One commenter asserts current, not proposed, reimbursement rates for Medicaid services are well below those of other reimbursement sources for similar services. The commenter contends that the department is out of compliance with 42 USC 1396a(30)(A) which states that the department must assure that payments are consistent with efficiency, economy, and quality of care, and are sufficient to enlist enough providers that care and services are available under the plan, at least to the extent that such care and services are available to the general population in the geographic area. The commenter references the current Medicaid reimbursement for CPT code 90806 (individual psychotherapy), which is $57.26, as an example. The commenter reports that for the same service, the Veteran's Administration reimburses $98.04, New West reimburses $80.77, Blue Cross/Blue

Shield reimburses $70.78, New West Medicare reimburses $64.62, and Healthy Montana Kids reimburses $72.50.

Response #5: The department disagrees that current Medicaid rates have resulted in insufficient providers of that service. The department studied CPT code 90806 (individual psychotherapy) utilization rates for state fiscal year (SFY) 2009, 2010, and 2011. Given claims data, the department does not believe current Medicaid rates for CPT Code 90806 (individual psychotherapy) demonstrate a loss of access to individual psychotherapy. From SFY 09 to SFY 10, the number of youth receiving individual psychotherapy increased 8.3%. From SFY 10 to SFY11 the number of youth receiving individual psychotherapy increased 11.9%. The department regularly reviews service utilization data for trends for all children's mental health services, including increased or decreased access. The department does not believe access has been decreased due to the existing rate.

Comment # 6: One commenter described the department rate-setting methodology as arbitrary and capricious and asked the department to describe how Medicaid rates are determined. The commenter asked if the department conducts surveys to determine rates or if budgetary concerns are the only factor in determining rates.

Response # 6: The proposed amendment to ARM 37.87.901 does not change the method of establishing rates but does reflect a change in the conversion factor. The department assumes the commenter is referring to proposed amendment in ARM 37.87.901, which incorporates the Children's Mental Health Fee Schedule. Children's Mental Health Bureau (CMHB) uses both the Resource Based Relative Value System (RBRVS) and cost studies to determine reimbursement rates.

Outpatient therapy service rates are determined by the RBRVS. The RBRVS is used nationwide by most health plans, including Medicare and most state Medicaid programs. The system was developed by Medicare and implemented in 1992. Since 1997 the department has used its RBRVS based fee schedule as the basis for paying almost all services provided by physicians, mid-level practitioners, therapists, and other individual practitioners.

The relative value unit (RVU) component of the RBRVS system is revised annually by Centers for Medicare and Medicaid Services (CMS) and the American Medical Association (AMA). An RVU is a numerical value assigned to each medical procedure. RVUs are added for new procedures, and the RVUs of particular procedures may increase or decrease from year to year. The department proposes to amend ARM 37.85.212 to adopt current RVUs.

The department annually calculates conversion factors for allied services, mental health services, and anesthesia services. These conversion factors are calculated by dividing the Montana Legislature's appropriation for Medicaid clients' health care during the upcoming SFY by the estimated total units of health care, expressed as total RVUs paid, to be provided during the upcoming SFY. The resulting quotient is the conversion factor. Given the above calculation, the mental health conversion

factor is proposed to be at $22.23. Non-RBRVS Children's mental health rates are determined by service specific cost studies.

The 2% rate reduction of mental health services is due to provider rate increases that went into effect in FY 2010, were held constant in FY 2011, and were paid for with one-time-only (OTO) funding appropriated by the 61st Legislative session in 2009. This OTO funding was not included in the base budget for FY 2012 and the funds were not appropriated by the 62nd Legislative session in 2011. The net result is a rate decrease of approximately 2% for mental health service providers.

Comment #7: In the "Under 18 Years of Age Fee Schedule" one commenter objects to the Section 6 Fiscal Impact statement rationale which states that "these changes are not expected to have an impact on youth and families receiving Targeted Case Management (TCM) or outpatient therapy services." The commenter asks how the department came to that conclusion. The commenter also asked if providers were contacted with regard to the fiscal impact.

Response #7: The statement referenced in the comment was intended to reference the fiscal impact of removing the prior authorization requirement for TCM and outpatient therapy only, and not intended to reference the 2% provider rate reduction.

The department recognizes there will be a fiscal impact for TCM and outpatient therapy services with the 2% rate reduction for TCM and outpatient.

The estimated fiscal impact of all the 2% rate reduction of these rules is:

	Total Cost	State General Fund	Federal Match
9/1/11 - 6/30/12	($991,309)	($335,162)	($656,147)

This rule amendment is estimated to impact 260 Medicaid providers and 10,500 Medicaid youth.

Providers were not contacted about the fiscal impact. The department calculated the rate.

Comment #8: One commenter expressed concerns that the department chose to allow unlimited pharmacology visits and prescriptions and is proposing to decrease access to psychotherapy with rate reductions. The commenter asserts psychotherapy is the most cost-effective, safe, and least invasive treatment for people with mental disabilities. The commenter believes there is a recent increase in prescription medications use that is related to a decrease in the availability of psychotherapy services.

Response #8: The department thanks the commenter for the comment, but believes this comment is outside the scope of these proposed rule changes and does not agree that access to psychotherapy services will significantly decrease.

Comment #9: One commenter stated the 2% rate reduction takes children's mental health providers back to the 2008 rates. The commenter says that given the 2011 Legislature's projected surplus of $150 million by mid-2013, and the newly projected fund balance surplus of $217 million released recently by legislative fiscal staff, there is adequate funding to not only have maintained rates at the current 2011 level, but to increase them as well.

Response #9: The 62nd Legislature would have had to appropriate funds to sustain the OTO 2% increase in provider rates. The projected surplus and the legislative appropriation serve two different purposes. Increased state revenues will not change the sums currently appropriated by the Legislature for the department's programs.

/s/ John Koch
Rule Reviewer

/s/ Laurie G. Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 15, 2011

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

In the matter of the adoption of New Rule I and amendment of ARM 37.40.1421 pertaining to all Medicaid provider fee schedules and home and community-based services (HCBS) for the elderly and people with physical disabilities	)))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 26, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-547 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 896 of the 2011 Montana Administrative Register, Issue Number 10.

2. The department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I [37.85.105] EFFECTIVE DATES OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) remains as proposed.

(2) The department adopts and incorporates by reference, the fee schedule for the following programs on the date stated:

(a) home and community-based services for elderly and physically disabled persons fee schedule, as provided in ARM 37.40.1421, is effective ~~August 1, 2011~~ September 1, 2011.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-402, MCA

3. The department has amended ARM 37.40.1421 as proposed.

4. The department has thoroughly considered the comments and testimony received. A summary of the department's comments and the department's responses are as follows:

COMMENT #1: The department received in excess of 70 oral and written comments related to the changes being proposed in this rule notice. The majority of the comments received pertained to the targeted Medicaid rate reductions for assisted living facilities, but also the 2% provider rate reductions for this program. Targeted assisted living facility rate increases provided in the 2010/2011 biennium with one-time-only (OTO) funding were not restored by the 2011 Montana Legislature in House Bill 2 (HB2). Following are some example comments received:

Commenters stated that the decreased rate being proposed is insufficient to pay for quality services in this setting. The current rates are too low and the 10-12% reduction is too drastic to be absorbed.

The proposed rate reduction will cause some assisted living providers to discharge current Medicaid recipients and/or not accept new Medicaid recipients. As it is now, very few facilities accept Medicaid residents due to the current discounted payment rate under Medicaid.

HCBS assisted living costs Medicaid less than nursing homes and consumers prefer it. Assisted living providers have accepted rates below their costs. The rate decrease in assisted living will result in a shift to skilled nursing home care at a significantly higher cost.

There was a recommendation that the department include language in these rules to allow higher adult residential rates to be paid if the department finds it is unable to place waiver clients in assisted living when that is the appropriate and least restrictive setting.

RESPONSE #1: The department appreciates the number of individuals that took the time to comment on these rules. The department has limited flexibility to mitigate these funding reductions and maintain this program within the funding levels appropriated by the Montana Legislature. Based on comments received related to the targeted assisted living facility rate reductions that were funded with one-time-only (OTO) funding, the department has evaluated its overall funding for the waiver program and determined that we can mitigate a portion of this reduction by managing individual consumer care budgets to direct funds where they are needed most, thus mitigating the $1,041,695 total fund reduction that was targeted for assisted living facility rates. The OTO 2% provider rate increase that was provided in Fiscal Year (FY) 2010 and sustained in 2011 was not restored in (HB2) that was passed by the 62nd Montana Legislature and will not be restored to this category of services. The department will continue to monitor the waiver budget and this program area in particular, to assess the ability of Medicaid waiver consumers to continue to access this service setting.

COMMENT #2: Three commenters expressed rate reduction concerns with regard to assisted living facilities providing specialized services to consumers with traumatic brain injuries (TBI). These facilities are required to provide a higher level of care and provide additional staff training. The staffing ratio is crucial to meet the needs of the consumers and complete individualized habilitation plans.

RESPONSE #2: The department appreciates the specialized services provided by the assisted living facilities providing services to consumers with TBI. However, the OTO 2% provider rate increase that was provided in FY 2010 and sustained in 2011 has not been restored in HB 2 that was passed by the 62nd Montana Legislature. The department has limited flexibility to mitigate these funding reductions and

maintain this program within the funding levels appropriated by the Montana Legislature.

COMMENT #3: Commenters expressed concern with the department's ability to complete the legislative directive to utilize 100 slots to transition or divert individuals from nursing facility placements. Assisted living facilities play a key role in transition/diversion projects and the proposed rate reduction may significantly reduce access to assisted living for Medicaid consumers.

RESPONSE #3: The department has undertaken nursing home transition programs for several years and has rarely had difficulty in finding transition placements for those nursing facility residents that want to relocate to the community and are appropriate to transition. Clearly, these new 100 slots are targeted to avoid or divert, if possible, the initial admission to the nursing facility. The department will continue to monitor the waiver budget and specifically these 100 slots to assess the ability of Medicaid consumers to continue to access community settings, of which assisted living facilities are only one alternative for placement.

COMMENT #4: One commenter expressed concern with the priorities directed by the legislative funding for 100 additional waiver slots. The commenter was concerned about the use of dollars directed toward HCBS waiver services being allowed to fund Medicaid nursing home bed days.

RESPONSE #4: The 62nd Legislature appropriated $2,500,000 to meet three specific priorities for this designated funding for 100 new waiver slots: (1) plans of care for individuals moved from nursing homes into community settings under the HCBS program; (2) maintaining individuals in assisted living facilities and others in the community who are at immediate risk of nursing home placement; and (3) Medicaid nursing home bed days in the event bed days are underfunded. These dollars do not become a part of the HCBS waiver budget until one of the 100 potential slots is approved. If a portion of the funding for these slots cannot be met within the first two priorities, then it can become available for priority three. It is unlikely that there will be a need to fund nursing home bed days with any of this funding in FY 2012.

COMMENT #5: One commenter expressed concern with the expansion of 100 waiver slots while reducing significantly the rates for assisted living providers. It is felt that access will be severely limited and that a portion of these dollars would be better spent to maintain the current assisted living rate.

RESPONSE #5: The 62nd Legislature appropriated $2,500,000 to meet three specific priorities for this designated funding for 100 new waiver slots: (1) plans of care for individuals moved from nursing homes into community settings under the HCBS program; (2) maintaining individuals in assisted living facilities and others in the community who are at immediate risk of nursing home placement; and (3) Medicaid nursing home bed days in the event bed days are underfunded. This language is specific that this designated appropriation must be used for this specific

purpose, and the department intends to track these placements during the biennium in order to provide information on who has utilized these specific service slots.

COMMENT #6: One commenter questioned the implementation date of this proposed rule. New Rule I [37.85.105] states August 1, 2011, but the explanation in the rule rationale under ARM 37.40.1421 indicates an effective date of August 31, 2011.

RESPONSE #6: The effective date for this rule will now be September 1, 2011 due to the delay in the filing of this second notice of the rule. New Rule I [37.85.105] fee schedule will be amended to read September 1, 2011 rather than the August 1, 2011 date that was included in the first notice of this rule. The date stated in the statement of reasonable necessity under ARM 37.40.1421 was a clerical error and has been corrected. The department is amending the text to read: "This rule is also being amended to establish a published fee schedule for this program effective ~~August 31, 2011~~ August 1, 2011".

COMMENT #7: One commenter requested the department make available any information developed related to the adequacy of the rates being proposed.

RESPONSE #7: The waiver has historically had an adequate number of providers for the HCBS Waiver Program. We are aware that Medicaid rate reductions may impact the number of assisted living facility providers available, but it is felt that the access will remain adequate. There continue to be new assisted living facilities constructed and additional beds added in this area, thus there is capacity in the assisted living market for placements to occur. The waiver has seen increased growth in this area of their budget, even prior to this targeted increase in the rates in 2010/2011. The assisted living portion of the waiver now makes up approximately a third of the total waiver placements in the state. The department will continue to monitor the waiver budget and this program area in particular and assess the ability of Medicaid waiver consumers to continue to access this service setting.

COMMENT #8: Four commenters expressed concerns regarding the new requirements being proposed for assisted living facilities providing services to Medicaid individuals.

RESPONSE #8: This comment is not related to the topic of rule notice MAR 37-547.

COMMENT #9: One commenter expressed concerns with the assisted living guidelines being proposed by the Centers for Medicare and Medicaid.

RESPONSE #9: This comment is not related to the topic of rule notice MAR 37-547.

COMMENT #10: One commenter expressed concern regarding Montana's Medicaid policy not incorporating the ability for family supplementation of assisted living rates.

RESPONSE #10: This comment is not related to the topic of rule notice MAR 37-547.

COMMENT #11: One commenter expressed concern regarding availability of a waiver slot for any Medicaid resident of a nursing home.

RESPONSE #11: This comment is not related to the topic of rule notice MAR 37-547.

COMMENT #12: One commenter expressed their thanks and support for the change in the language for switching "plan of care" to "service plan". Using the term "service plan" rather than "plan of care" more accurately portrays the holistic nature of services that are available through the waiver program which, are not only medical in nature, but cover an array of areas in order to allow individuals to lead as normal and as independent lives as possible in their own communities.

RESPONSE #12: The department agrees with this comment and thanks the commenter.

/s/ John Koch
Rule Reviewer

/s/ Laurie G. Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 15, 2011.

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

In the matter of the adoption of New Rules I through VIII and the amendment of ARM 37.34.913 pertaining to reimbursement for the provision to persons with developmental disabilities of services and items covered as benefits of the various programs of services administered by the developmental disabilities program	))))))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On June 9, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-548 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1008 of the 2011 Montana Administrative Register, Issue Number 11.

2. The department has adopted the above-stated rules as proposed: New Rule I (37.34.3001), II (37.34.3002), III (37.34.3005), IV (37.34.3006), V (37.34.3007), VI (37.34.3012), VII (37.34.3013), and VIII (37.34.3015).

3. The department has amended ARM 37.34.913 as proposed.

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: A comment was received by the department regarding the data used by the department to establish the "geographic factor" that was applied to the different counties in setting certain reimbursement rates for services. The commenter stated that in the proposed September 1, 2011 version of the Service Reimbursement Rates and Procedures Manual (hereafter Rates Manual), only Carbon County had no geographic adjustment, where prior to this edition of the Rates Manual it had a geographic factor of 2%. The commenter stated that the department should have used demographic data other than what was used, including "non-HUD rent" in order to determine that the county should have received an increase rather than a decrease. The commenter noted that her analysis of the data used by the department showed that two other counties should have had higher geographic factors in their counties.

Response #1: The department identified and applied cost factors that were common to all counties and that were most relevant to what direct care staff experience and

to the challenges in hiring those staff. In addition, availability of reliable data and ease of updating the department's information was a consideration in the factors that were chosen to be evaluated. It was determined that housing costs which include mortgage payments are not as relevant for direct care staff (since most don't own their own homes) and that rental costs are more appropriate. Private party rent data is not available in a complete and reliable format, so HUD rent data was used. The three cost factors which are easily available, reliable, transparent, and most applicable for direct care staff are: annual average wages, unemployment rates, and rent.

The department reviewed the data sources and the comments regarding the cost factors for two counties and found them to be correct. There are some reports that have been updated since the initial evaluation in early June that do affect two counties. The department has adjusted the geographic factors for those two counties and the adjustments will appear in the updated version of the September 1, 2011 Rates Manual. The updated information did not result in any geographic application to Carbon County.

Comment #2: A commenter expressed a concern about the required use of the Agency Wide Accounting Client System (AWACS) to invoice the department for services. The commenter asked what process the department would use to allow providers to invoice if the AWACS system is not functioning.

Response #2: The department shares the commenter's concerns that there is the institutional capability to handle billing if the AWACS system fails. The department maintains the contingent ability to process manual invoices if the AWACS system should fail for an extended period of time.

Comment #3: An issue raised by a commenter regarded the Tier system used by the department for its supported employment services reimbursement rates. The commenter noted that the Tiers are not multiples of each other and, as a result, it is difficult to blend service billing into more than one Tier. The commenter suggests that a combination of the established unit and hourly rate would be helpful.

Response #3: The monthly units for supported employment services are based on average ranges of service hours that individuals were receiving. The monthly units were not designed to be divisible by one another. The Tiers remain the same as previously used editions of the manual: Base = 1-10.5 hours, Tier 1 = 11-21 hours, and Tier 2 = 21-31 hours. Rates schedules back to 2007 and the Career Plan can verify these ranges have not changed. A change in any of the ranges for the reason to make them multiples of each other would be a change in the methodology without data to substantiate it. In addition, the system is not designed to accommodate monthly units and hourly units for the same service at the same time, and changes in that rule are not planned.

For future planning purposes, the department has obtained the assistance from the State Employment Leadership Network (SELN) and will be reviewing our entire

employment services system. Changes to supported employment services are expected and could lead to changes in the reimbursement system.

Comment #4: A comment was received in which the commenter requested to know the year of the data used by the department to calculate the "GeoFactor" and whether there is more recent data available.

Response #4: During the department's initial review in early June 2011, the data used for the geographic factors were the following: Department of Labor 2009 Annual Average Wages, Department of Labor Unemployment data from April 2011, and Housing/apartment Rent from HUD in March 2011. As a result of this comment, the department reviewed all the data sources and found that more recent data for Unemployment and Housing/Rent has been posted. The department obtained the newer data and updated our results on July 12, 2011. Based upon current level of funding available, the new reimbursement rates along with the updated geographic percentages and counties eligible for geographic adjustments will appear in the September 1, 2011, Rates Manual.

The geographic factor language originally proposed in the September 1, 2011, Rates Manual stated:

"Geographical factor: Geographical cost adjustment factors consider annual average wage, cost of housing/rent, and unemployment. Based upon these factors, geographical cost adjustments are provided for residential and day habilitation providers in the following counties:

1.7% add-on: Beaverhead, Glacier, Park, Blaine, Lake, Hill, Ravalli, Madison, Mussellshell, Dawson, Lincoln, Custer.

4.47% add-on: Gallatin, Missoula, Yellowstone, Lewis & Clark, Stillwater, Jefferson, Fallon, Flathead, Rosebud, Big Horn, Powell, Richland, Silver Bow, Sweet Grass, Toole, Cascade."

The new language for the September 1, 2011 Rates Manual states:

"Geographical factor: Geographical cost adjustment factors consider annual average wage, cost of rent, and unemployment. Based upon these factors, geographical cost adjustments are provided for residential and day habilitation providers in the following counties:

1.84% add-on: Beaverhead, Park, Blaine, Lake, Hill, Ravalli, Madison, Dawson, Lincoln, Custer.

4.48% add-on: Gallatin, Missoula, Yellowstone, Lewis & Clark, Stillwater, Jefferson, Fallon, Flathead, Rosebud, Big Horn, Powell, Richland, Silver Bow, Sweet Grass, Toole, Cascade, Musselshell, Glacier."

/s/ Cary B. Lund
Rule Reviewer

/s/ Laurie G. Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 15, 2011

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

In the matter of the adoption of New Rules I through XII, amendment of 37.40.1406, 37.40.1407, 37.40.1408, 37.40.1415, 37.40.1420, 37.40.1426, 37.40.1430, 37.40.1435, 37.40.1438, 37.40.1446, 37.40.1448, 37.40.1449, 37.40.1451, 37.40.1452, 37.40.1465, 37.40.1488, and repeal of 37.40.1437, 37.40.1464, 37.40.1466, and 37.40.1467 pertaining to home and community-based services (HCBS) for the elderly and people with physical disabilities	))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 23, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-551 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1077 of the 2011 Montana Administrative Register, Issue Number 12.

2. The department as adopted New Rule II (37.40.1422), New Rule III (37.40.1423), New Rule IV (37.40.1424), New Rule V (37.40.1425), New Rule VI (37.40.1426), New Rule VII (37.40.1427), New Rule VIII (37.40.1431), New Rule IX (37.40.1436), New Rule X (37.40.1437), New Rule XI (37.40.1439), and New Rule XII (37.40.1440) as proposed.

3. The department has amended ARM 37.40.1406, 37.40.1407, 37.40.1408, 37.40.1415, 37.40.1420, 37.40.1426, 37.40.1430, 37.40.1435, 37.40.1438, 37.40.1446, 37.40.1448, 37.40.1449, 37.40.1451, 37.40.1452, 37.40.1465, and 37.40.1488. The department has repealed ARM 37.40.1437, 37.40.1464, 37.40.1466, and 37.40.1467 as proposed.

4. The department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE I [37.40.1402] HOME AND COMMUNITY-BASED SERVICES FOR ELDERLY AND PHYSICALLY DISABLED PERSON: DEFINITIONS (1) through (19) remain as proposed.

(20) "Serious occurrence" means a significant event which affects the health, welfare, and safety of an individual served in home and community-based services. The department has established a system of reporting and monitoring serious

incidents that involve consumers served by the program in order to identify, manage, and mitigate overall risk to the individual.

(20) through (23) remain the same, but are renumbered (21) through (24).

AUTH: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-402, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-402, MCA

5. 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: The department received 18 oral and written comments related to the changes being proposed in this rule notice. The majority of the comments received pertained to ARM 37.40.1435 and related to adult residential care facilities and the belief that these facilities should provide for private room accommodations for Medicaid consumers in this setting.

Commenters stated that individual choice and freedom is a fundamental value of community settings, and consumers should not be forced to have a roommate. Community settings should offer privacy and individual control over their setting to the fullest extent possible. Roommate issues magnify the stressors already inherent with significant disabilities and increase the difficulty for successful community placement. Every consumer should be protected from discrimination and not forced to have a roommate who is not of their choosing. This language needs to be strengthened to allow for private living units and maximum individual independence and choice.

Response #1: The department appreciates the number of individuals that took the time to comment on these rules. The characteristics of a home and community setting and assisted living facilities providing a homelike environment are a topic that the department has had much discussion about with consumer and advocacy groups, facility owners and operators, as well as the Centers for Medicare and Medicaid Services (CMS) related to this service setting. Federal regulations are currently being evaluated pertaining to the specific issue of facilities meeting home and community characteristics. To the extent there are changes adopted at the federal level the department will re-evaluate this portion of the Home and Community-Based Services (HCBS) waiver rule to determine if additional changes will be necessary to be consistent with these federal changes. The department will not be requiring private rooms at this time.

Many consumers currently reside in adult residential facilities that meet all or most of the homelike environment requirements of this rule section. Many facilities already provide private living accommodations for residents who live in this service setting. We agree that there are many consumers that benefit from private rooms due to their physical and mental health needs. We continue to encourage the movement of adult residential facilities towards offering single occupancy or private rooms for all residents in adult residential facilities regardless of payor source. This is consistent

with providing a homelike environment for consumers, is the preference of many consumers and their families, and accommodates consumer choice.

Comment #2: Several commenters expressed support for the proposed language changes related to assisted living/adult residential facilities and the steps that the department has taken toward making these proposed rules more reasonable for all of the assisted living providers across the state.

Response #2: The department acknowledges this support and acknowledges the need to evaluate this service setting in an ongoing manner. The characteristics of a home and community setting will continue to be assessed as the CMS develops federal rules regarding this service setting. The department will continue to discuss and evaluate those changes on an ongoing basis with providers, consumers, and advocacy groups to the extent changes are made that impact adult residential and assisted living facility providers and services.

Comment #3: Comments were made in support for the addition of the Community Transitions Services to the waiver as reimbursable services under New Rule II (37.40.1422). One of the biggest barriers to serving individuals in their own homes and communities is the lack of accessible, affordable housing. Making community transition services reimbursable will go a long way towards ensuring that individuals can access services in the least restrictive setting possible.

Response #3: The department agrees with this comment and the importance of adding these transition services to the HCBS service package.

Comment #4: Comments were made in support of the proposed language that incorporated the Big Sky Bonanza services into the Montana Big Sky waiver. Specifically, the comments supported the consumer-directed components of the Big Sky Bonanza program such as financial management and independence advisor services, consumer-directed goods and services, and community support services.

Response #4: The department agrees with this comment and the importance of adding these services to the Montana Big Sky waiver.

Comment #5: Comments were made that expressed support for the language changes, within the rule, that incorporate the use of service plan and consumer directed services. This language more accurately portrays the holistic nature of services that are available through the waiver program which are not only medical in nature, but cover an array of areas in order to allow individuals to lead as normal and as independent lives as possible in their own communities.

Response #5: The department agrees with this comment and thanks the commenter.

Comment #6: One commenter expressed concern that the rule language may be duplicative of ARM 37.106.2831 (activities) and ARM 37.106.2833 (dining services) and wanted the department to ensure that they do not conflict with each other.

Response #6: The department has reviewed each of the mentioned rules in relation to the proposed HCBS rule and feels assured there is no conflict between these rules.

Comment #7: One commenter expressed concern that the assisted living (AL) language may present a challenge for some smaller ALs to readily meet the requirement and suggested language, similar to other areas of rule, such as: "Any provision of this rule may be waived at the discretion of the department if conditions in existence prior to the adoption of this rule or construction factors would make compliance extremely difficult or impossible and if the department determines that the level of safety to residents and staff is not diminished."

Response #7: The department recognizes the concern expressed; however, Medicaid funded HCBS waiver services are approved by the CMS and must adhere to federal guidance on restrictions and limitations of any approved service. Exceptions to waive or make exceptions to these requirements for Medicaid funding are not at the discretion of the department and cannot be allowed as this commenter suggests.

Comment #8: One commenter expressed concern related to the requirement that assisted living facilities need to provide a serious occurrence reports (SORs) and requested a clarification or definition of a SOR be added to the rule.

Response #8: The department has a long standing requirement for providers of HCBS services to report serious occurrences. Assisted living facilities have had this requirement as a part of providing Medicaid reimbursed services and the requirement is now being added to the rule. The department will add a definition of serious occurrences to the rule language in New Rule I (37.40.1402).

/s/ John Koch
Rule Reviewer

/s/ Laurie G. Lamson for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State August 15, 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 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, 2011. This table includes those rules adopted during the period April 1, 2011, through June 30, 2011, 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 March 31, 2011, 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 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.

ADMINISTRATION, Department of, Title 2

I-IX	Bank Debt Cancellation Contracts - Debt Suspension Agreements, p. 1430
I	Montana Mortgage Loan Origination Disclosure Form, p. 1231
I-XX	Reasonable Accommodations and Equal Access, p. 966
2.4.403	and other rules - Single Audit Act, p. 1325
2.21.4001	and other rules - Equal Employment Opportunity - Nondiscrimination - Harassment Prevention, p. 982
2.21.6608	and other rules - Employee Records Management, p. 998
2.59.1505	and other rule - Department Approval of Loan Agreement Form - Examination of Deferred Deposit Lenders, p. 692, 1365
2.59.1708	and other rule - Renewal Fees for Mortgage Brokers - Mortgage Lenders - Mortgage Loan Originators, p. 274
2.59.1718	and other rules - Exemptions Under 32-9-104, MCA, Determining the Amount of the Surety Bond Required for New Applicants - Date by Which the Montana Test Must Be Completed in Order to Be Licensed as a Mortgage Loan Originator in Montana - Temporary Licenses - Transition Fees, p. 2627, 2956

(Public Employees' Retirement Board)

2.43.1302 and other rules - Operation of the Retirement Systems and Plans Administered by the Montana Public Employees Retirement Board, p. 1211

2.43.2105 Basic Period of Service, p. 132, 643

(State Compensation Insurance Fund)

2.55.320 Classifications of Employments, p. 2675, 142

AGRICULTURE, Department of, Title 4

4.12.3503 and other rule - Certified Seed Potatoes, p. 2867, 232

4.13.1001A State Grain Lab Pricing, p. 696, 1366

4.16.701 and other rules - Agricultural Marketing Development Program, p. 2633, 2957

STATE AUDITOR, Title 6

I-VI Insurer Investments in Derivative Instruments, p. 762, 1303

6.6.2401 and other rules - Group Coordination of Benefits, p. 2426, 2958

6.6.3401 and other rules - Standards for Companies Considered to Be in Hazardous Financial Condition, p. 616, 1128

6.6.3504 Annual Audited Reports - Establishing Accounting Practices and Procedures to Be Used in Annual Statements, p. 705, 1129

6.6.4601 and other rules - Montana Life and Health Insurance Guaranty Association Act - Notice Concerning Coverage Limitations and Exclusions, p. 700, 1367

6.10.502 Broker-Dealers and Investment Advisors, p. 746

COMMERCE, Department of, Title 8

I Administration of the 2013 Biennium Quality Schools Grant Program-Planning Grants, p. 708, 1304

I Administration of the 2011-2012 Federal Community Development Block Grant (CDBG) Program, p. 2678, 645

8.94.3726 Incorporation by Reference for the CDBG Program, p. 135, 566

8.94.3727 Administration of the 2011-2012 Federal Community Development Block Grant (CBDG) Program, p. 710, 1130

8.99.504 and other rules - Microbusiness Loans, p. 713, 1131

8.119.101 Tourism Advisory Council, p. 1439

(Board of Housing)

I-VII Montana Veterans' Home Loan Programs, p. 1236

8.111.202 and other rules - Procedural Rules - Qualified Lender Requirements, p. 622, 1307

8.111.602 Low Income Housing Tax Credit Program, p. 2792, 567

EDUCATION, Department of, Title 10

(Board of Public Education)

I-XI English Language Proficiency (ELP) Standards and Performance Descriptors, p. 1331

FISH, WILDLIFE AND PARKS, Department of, Title 12

I Aquatic Invasive Species Inspection Stations, p. 626, 1132

12.10.103 and other rules - Shooting Range Development Grants, p. 2794, 101

(Fish, Wildlife and Parks Commission)

12.11.610 and other rules - Recreational Use Rules on the Bitterroot River, Blackfoot River, and Clark Fork River, p. 767

12.11.805 and other rules - Recreational Use Rules in Montana, p. 83, 901

ENVIRONMENTAL QUALITY, Department of, Title 17

I-VII Electronic Filing of Documents, p. 628, 1135

17.50.203 Completion of Shielding, p. 1442

17.50.213 Motor Vehicle Recycling and Disposal - Reimbursement Payments for Abandoned Vehicle Removal, p. 91, 379

17.53.706 and other rules - Hazardous Waste and Underground Storage Tanks - Emergency Preparedness, Prevention, and Response at Transfer Facilities - Reporting of Suspected Releases - Reporting and Cleanup of Spills and Overfills - Reporting of Confirmed Releases, p. 25, 234

17.56.102 and other rules - Underground Storage Tanks - Applicability - Compliance Inspections - Petroleum UST Systems - Fee Schedule - Permit Issuance - Anti-Siphon Requirements, p. 2899, 145

17.56.308 and other rules - Underground Storage Tanks - Operating Tags - Delivery Prohibition, p. 1048

17.74.301 and other rules - Incorporation by Reference - OSHA Preclusion - Asbestos Project Management, p. 493, 718

17.80.201 and other rules - Tax Certification - Pollution Control Equipment - Energy Facilities - Certification of Certain Energy Production or Development Facilities or Equipment for Property Tax Classification or Abatement - Monitoring of Compliance With Certification Criteria - Revocation of Certification, p. 2886, 233

(Board of Environmental Review)

17.8.102 Incorporation by Reference of Current Federal Regulations and Other Materials Into Air Quality Rules, p. 2636, 143

17.8.604 and other rules - Air Quality - Open Burning, p. 2880, 569

17.8.763 Air Quality - Revocation of Permit, p. 2878, 568

17.8.801 and other rules - Air Quality - Definitions - Ambient Air Increments - Major Stationary Sources - Source Impact Analysis - Source Information - Sources Impacting Federal Class I Areas - Definitions -

When Air Quality Permit Required - Baseline for Determining Credit for Emissions - Air Quality Offsets, p. 799

17.30.201 and other rule - Water Quality - Permit Application - Degradation Authorization - Annual Permit Fees - General Permits, p. 2870, 909

17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162, 1324, 264, 1648, 89, 1244

17.30.1201 and other rules - Water Quality - Montana Pollutant Discharge Elimination System Effluent Limitations and Standards - Standards of Performance - Treatment Requirements, p. 771

17.36.922 and other rule - Local Variances - Variance Appeals to the Department, p. 528, 1548

17.38.101 and other rules - Plans for Public Water Supply or Wastewater System - Fees - Definitions - Water Supply - Chemical Treatment of Water, p. 521, 1545

17.38.204 Maximum Organic Chemical Contaminant Levels, p. 2639, 144

(Petroleum Tank Release Compensation Board)

17.58.201 and other rules - Procedural and Substantive Rules - Petroleum Tank Release Compensation, p. 1, 377

17.58.326 and other rules - Operation and Management of Petroleum Storage Tanks - Review and Determination of Claims for Reimbursement - Third-Party Damages, p. 720, 1370

TRANSPORTATION, Department of, Title 18

18.9.102 and other rules - Licensed Distributors - Special Fuel Users - Invoice Errors - Multi-Distributor Invoice Requirements, p. 2454, 2814, 2961

CORRECTIONS, Department of, Title 20

I Expansion of Adult Community Corrections Contracted Treatment Facilities or Programs, p. 1336

I & II Day Reporting Program, p. 29, 235

I & II Satellite-Based Monitoring Program, p. 33, 236

20.7.506 and other rules - Siting - Establishment - Expansion of Prerelease Centers, p. 1339

20.9.302 and other rules, Youth Who Have Been Paroled From Youth Correctional Facilities, p. 808, 1345

20.9.602 and other rules - Prison Rape Elimination Act - Licensure of Youth Detention Facilities, p. 183, 570

JUSTICE, Department of, Title 23

I-IX Establishing the 24/7 Sobriety Program, p. 1246

(Gambling Control Division)

23.16.120 Loans and Other Forms of Financing, p. 2903, 146

23.16.1802 and other rules - Advertising Restrictions for Video Gambling Machines - Expiration Date for Video Gambling Machine Ticket Vouchers - Software Specifications for Video Line Games - Special Bingo Sessions - Definitions - General Specifications of Video Gambling Machines - General Software Specifications of Video Gambling Machines - Software Specifications for Video Multigame Machines - Bonus Games - Automated Accounting and Reporting System - Video Gambling Machine - Hardware and Software Specifications - Prohibited Machines - Approval of Video Gambling Machines and/or Modifications to Approved Video Gambling Machines - Inspection and Seizure of Machines - Manufacturer of Illegal Gambling Devices – Department Contact Information - Combination of Video Poker, Keno, Bingo, and Video Line Games - Testing of Automated Accounting and Reporting Systems - Definitions - Prize Awards for Live Keno and Bingo Games, p. 1252

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I-XIII Approved Construction Techniques for Fire Mitigation, p. 980, 1966, 237, 319

24.7.301 and other rules - Board of Labor Appeals - Unemployment Insurance, p. 195, 573

24.11.2221 Unemployment Insurance Rates for Governmental Entities, p. 1002, 1371

24.16.7506 and other rules - Collective Bargaining Proceedings Heard by the Board of Personnel Appeals, p. 1652, 2841, 47

24.17.103 and other rules - Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services, p. 2681, 102, 747

24.17.127 Prevailing Wage Rates for Public Works Projects-Nonconstruction Services, p. 725, 1136

24.21.401 and other rules - Apprenticeship Training Programs, p. 2466, 2962

2.26.643 Petitions for Decertification Before the Board of Personnel Appeals, p. 1006, 1372

24.29.1401A and other rules - Implementation of Utilization and Treatment Guidelines - Medical Services Rules for Workers' Compensation Matters, p. 728, 1137

24.29.2701 and other rules - Silicosis Benefits - Subsequent Injury Fund, p. 2476, 2967

(Board of Athletic Trainers)
24.101.413 and other rules - Renewal Dates and Requirements - Fee Schedule - Licensure of Athletic Trainers, p. 94, 576

(Board of Architects and Landscape Architects)
24.114.501 and other rules - Architect Examination - Landscape Architect Applications - Education and Experience, p. 1445

(Board of Barbers and Cosmetologists)
24.101.413 and other rule - Renewal Dates - Requirements - Fees, p. 812

(Board of Chiropractors)
24.126.510 and other rules - Endorsement - Inactive Status and Conversion - Minimum Requirements for Impairment Evaluators - Prepaid Treatment Plans, p. 2284, 380

(State Electrical Board)
24.141.405 and other rule - Fee Schedule - Nonroutine Applications, p. 1347

(Board of Nursing)
24.159.301 and other rules - Definitions - Fees - Faculty for Practical Nursing Programs - Medication Aides - Prohibited Intravenous Therapies - Licensure by Examination - Medication Aides - Nurse Reexamination, p. 1350

(Board of Outfitters)
24.171.401 and other rules - Fees - Outfitter Records - Safety Provisions - Inactive License - Guide License - Determination of Client Hunter Use - Renewals - Web Site Posting - Successorship, p. 1265

(Board of Pharmacy)
24.174.303 and other rules - Definitions - Examination for Licensure - Administration of Vaccines - Prescription Requirements - Internship Requirements - Preceptor Requirements - Registered Pharmacist Continuing Education - Disciplinary Action, p. 277, 1148
24.174.401 and other rules - Fee Schedule - Change in Address - Change of Pharmacist-in-Charge - Class IV Facility - Identification of Pharmacist-in-Charge - Wholesale Drug Distributor - Telepharmacy Operations - Dangerous Drugs - Cancer Drug Repository - Clinical Pharmacist Practitioner, p. 2041, 2968

(Board of Private Alternative Adolescent Residential or Outdoor Programs)
24.181.301 and other rules - Definitions - Licensing Fee Schedule - Application for Registration - Site Visits - Program Administration - Program Participant Protection - Definitions-Residential Programs - Renewals - Registration Fee Schedule - Implementation, p. 636

(Board of Professional Engineers and Professional Land Surveyors)

I-IV Professional Land Surveyor Scope of Practice Activities, p. 2288, 385

24.183.404 and other rules - Fee Schedule - Certificate of Authorization - Application - Grant and Issue Licenses - Uniform Standards, p. 1449

24.183.502 and other rule - Application Processes for Professional Engineers and Professional Land Surveyors, p. 286, 920

(Board of Real Estate Appraisers)

24.207.401 and other rules - Fees - Application Requirements - Qualifying Education Requirements - Qualifying Experience - Inactive License or Certification - Inactive to Active License - Trainee Requirements - Mentor Requirements - Continuing Education, p. 2905, 577

24.207.505 and other rule - Qualifying Education Requirements for Licensed Real Estate Appraisers - Residential Certification, p. 1362

(Board of Realty Regulation)

24.210.667 and other rule - Continuing Real Estate Education - Continuing Property Management Education, p. 815

(Board of Sanitarians)

24.216.402 and other rules - Fee Schedule - Applications - Minimum Licensure Standards - Examination - Continuing Education - Sanitarian-in-Training - Inactive Status Licensure, p. 364, 749

(Board of Social Work Examiners and Professional Counselors)

I-XII Qualification of Social Workers and Professional Counselors to Perform Psychological Testing, Evaluation, and Assessment, p. 533

24.101.413 Renewal Dates - Requirements - Licensure - Regulation of Marriage and Family Therapists, p. 550

24.219.301 and other rules - Definitions - Application Procedures - Supervisor Qualifications - Parenting Plan Evaluations, p. 540

(Board of Veterinary Medicine)

24.225.401 and other rules - Fees - Examination Application Requirements - Examination for Licensure - Board-Approved Training Program Criteria - Euthanasia Technician Test Criteria - Certified Euthanasia Agency Inspection Criteria, p. 371, 1151

LIVESTOCK, Department of, Title 32

32.2.404 and other rules -Department Livestock Permit Fees - Miscellaneous Fees - Definitions - Bison Unlawfully Estrayed - Public-Owned Migratory Bison From Herds Affected With a Dangerous Disease - Use of Brucella Abortus Vaccine - Domestic Bison Permit Before Removal From County or State - Livestock Market Releases, p. 1464
32.3.108 and other rules - Game Farm Regulations - Deputy State Veterinarians, p. 2492, 2974
32.3.201 and other rules - Definitions - Additional Requirements for Cattle - Official Trichomoniasis Testing - Certification Requirement - Reporting Trichomoniasis - Movement of Animals From Test Positive Herds - Epizootic Areas - Epidemiological Investigations - Exposed Herd Notification - Common Grazing - Grazing Associations - Penalties, p. 1470
32.3.220 and other rules - Semen Shipped Into Montana - Brucellosis Definitions - Designated Surveillance Area - Penalties, p. 2485, 2797, 147
32.3.433 and other rule - Animal Identification Within the DSA, p. 1053, 1551
32.3.1505 Blood Testing With Salmonella Antigens, p. 1056, 1556
32.6.712 Food Safety - Inspection Service - Meat - Poultry, p. 2483, 2973
32.8.101 and other rule - Grade A Pasteurized Milk - Time From Processing That Fluid Milk May Be Sold for Public Consumption, p. 289, 1461

NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.12.101 and other rules - Water Right Permitting, p. 1277

(Board of Land Commissioners)
36.11.402 and other rules - Forest Management Rules for Implementing Conservation Easements - Habitat Conservation Plans, p. 2687, 320
36.25.110 Rental Rate for State Grazing Leases, p. 1479

(Board of Oil and Gas Conservation)
I-V Oil and Gas Well Stimulation, p. 819

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-XIII Montana Medicaid Provider Incentive Program for Electronic Healthcare Records, p. 824, 1374
37.12.301 and other rules - Licensure of Laboratories Conducting Analyses of Public Water Supplies, p. 1059
37.27.128 and other rules - Emergency Care - Inpatient and Transitional Living Chemical Dependency Programs, p. 2053, 2975
37.34.206 and other rules - Developmental Disabilities Eligibility Rules for Medicaid Only, p. 312, 1158, 1311

37.34.913	and other rules - Reimbursement for the Provision to Persons With Developmental Disabilities of Services - Items Covered as Benefits of the Various Programs of Services Administered by the Developmental Disabilities Program, p. 1008
37.40.307	and other rules - Nursing Facility Reimbursement, p. 835, 1375
37.40.705	and other rules - Home Health Care - Personal Assistance Service, p. 858, 1386
37.40.1406	and other rules - Home and Community-Based Services (HCBS) for the Elderly and People With Physical Disabilities, p. 1077
37.40.1421	Medicaid Provider Fee Schedules - Home and Community-Based Services (HCBS) for the Elderly and People With Physical Disabilities, p. 896
37.50.901	Interstate Compact on the Placement of Children, p. 2297, 106
37.70.115	and other rules - Low Income Energy Assistance Program (LIEAP), p. 2700, 108
37.78.102	and other rule - Temporary Assistance for Needy Families (TANF), p. 2515, 107
37.78.102	Temporary Assistance for Needy Families (TANF), p. 561, 1313
37.79.102	and other rules - Healthy Montana Kids, p. 2521, 2845, 70
37.79.102	Healthy Montana Kids Definition of Federal Poverty Level, p. 871, 1388
37.80.101	and other rules - Child Care Assistance, p. 2925, 323
37.81.304	and other rules - Big Sky RX Benefit - Medicaid Dental Services - Outpatient Drugs - Prescriptions for Durable Medical Equipment - Prosthetics and Orthotics (DMEPOS) - Early and Periodic Screening - Diagnostic and Treatment (EPSDT) - Qualified Medicare Beneficiaries Chiropractic Services, p. 2528, 2986
37.82.101	and other rule - Medicaid Eligibility, p. 1293
37.85.212	and other rule - Resource Based Relative Value Scale (RBRVS) - Reimbursement for Physician Administered Drugs, p. 865, 1287
37.86.805	and other rules - Medicaid Acute Services Reimbursement - Early and Periodic Screening - Diagnostic and Treatment (EPSDT), p. 851, 1384
37.86.2206	and other rules - Provider Requirements - Reimbursement for Therapeutic Group Homes (TGH) - Therapeutic Family Care (TFC) - Therapeutic Foster Care (TFOC), p. 2085, 49
37.86.2224	and other rules - Children's Mental Health Bureau Rate Reduction, p. 874, 1290
37.86.2801	and other rules - Medicaid Inpatient Hospital Services, p. 884, 1391
37.86.3515	Case Management Services for Adults With Severe Disabling Mental Illness - Reimbursement, p. 2807, 449
37.86.3515	and other rules - Mental Health Services for Adults, p. 891, 1394
37.86.3607	Rates of Reimbursement for the Provision by Provider Entities of Medicaid Funded Targeted Case Management Services to Persons With Developmental Disabilities, p. 881, 1389
37.87.903	and other rules - Psychiatric Residential Treatment Facility Reimbursement, p. 293, 1154

(Commissioner of Political Practices)

BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in July 2011 appear. Vacancies scheduled to appear from September 1, 2011, through November 30, 2011, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of August 1, 2011.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JULY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Banking (Administration)			
Dr. Maureen J. Fleming	Governor	reappointed	7/1/2011
Missoula			7/1/2014
Qualifications (if required): public representative			
Board of Personnel Appeals (Labor and Industry)			
Mr. Richard Parish	Governor	Gallik	7/22/2011
Helena			1/1/2015
Qualifications (if required): individual with general labor-management experience			
Board of Pharmacy (Labor and Industry)			
Ms. Shirley Baumgartner	Governor	Burton	7/1/2011
Glasgow			7/1/2016
Qualifications (if required): licensed pharmacist			
Board of Physical Therapy Examiners (Labor and Industry)			
Mr. Brian Miller	Governor	Smith	7/1/2011
Kalispell			7/1/2014
Qualifications (if required): physical therapist			
Board of Professional Engineers and Land Surveyors (Governor)			
Mr. Ruhul Amin	Governor	reappointed	7/1/2011
Bozeman			7/1/2015
Qualifications (if required): licensed mechanical engineer and instructor			
Ms. Jane Eby	Governor	Hahn	7/1/2011
Kalispell			7/1/2015
Qualifications (if required): licensed land surveyor			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Professional Engineers and Land Surveyors (Governor) cont.			
Mr. Casey E. Johnston	Governor	reappointed	7/1/2011
Butte			7/1/2015
Qualifications (if required): licensed electrical engineer			
Ms. Ingrid Clare Lovitt-Abramson	Governor		7/1/2011
Missoula			7/1/2015
Qualifications (if required): public representative			
Board of Water Well Contractors (Natural Resources and Conservation)			
Mr. Kirk Waren	Director	reappointed	7/1/2011
Butte			6/30/2014
Qualifications (if required): none specified			
Burial Preservation Board (Administration)			
Mr. Morris Belgard	Governor	reappointed	7/28/2011
Hays			8/22/2012
Qualifications (if required): representative of the Fort Belknap Indian Community			
Electrical Board (Labor and Industry)			
Ms. Dawn Achten	Governor	reappointed	7/1/2011
Billings			7/1/2016
Qualifications (if required): public representative			
Judicial Standards Commission (Judiciary)			
Ms. Sue Schleif	Governor	reappointed	7/1/2011
Valier			7/1/2015
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Historical Society Board of Trustees (Historical Society)			
Secretary Bob Brown	Governor	reappointed	7/1/2011
Whitefish			7/1/2016
Qualifications (if required): public member			
Mr. Thomas Nygard	Governor	reappointed	7/1/2011
Bozeman			7/1/2016
Qualifications (if required): public member			
Ms. Crystal Wong Shors	Governor	reappointed	7/1/2011
Helena			7/1/2016
Qualifications (if required): public member			
Montana Noxious Weed Management Advisory Council (Agriculture)			
Mr. Jack Eddie	Director	Turner	7/7/2011
Dillon			6/30/2013
Qualifications (if required): representative of the Montana Weed Control Association			
Ms. Margie Edsall	Director	reappointed	7/7/2011
Sheridan			6/30/2013
Qualifications (if required): Western Montana counties representative			
Mr. Jim Gordon	Director	reappointed	7/7/2011
Huntley			6/30/2013
Qualifications (if required): Herbicide dealer/applicator representative			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Montana Noxious Weed Management Advisory Council (Agriculture) cont.			
Mr. Kurt Myllymaki	Director	reappointed	7/7/2011
Stanford			6/30/2013
Qualifications (if required): Consumer group representative			
Mr. Jim Story	Director	reappointed	7/7/2011
Corvallis			6/30/2013
Qualifications (if required): Biological Research and Control representative			
Mr. Todd Wagner	Director	reappointed	7/7/2011
Glasgow			6/30/2013
Qualifications (if required): Agriculture crop production representative			
Mr. Dick Zoanni	Director	Olsen	7/7/2011
Sidney			6/30/2013
Qualifications (if required): Eastern Montana counties representative			
Teachers' Retirement Board (Governor)			
Mr. Jeff Greenfield	Governor	reappointed	7/1/2011
Shepherd			7/1/2016
Qualifications (if required): teacher			
Mr. Darrell Layman	Governor	reappointed	7/1/2011
Glendive			7/1/2016
Qualifications (if required): retired teacher			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Telecommunications Access Services for Persons with Disabilities (Administration)			
Mr. Charles Charette	Governor	reappointed	7/28/2011
Lame Deer			7/1/2014
Qualifications (if required): person with a hearing disability			
Ms. Char Harasymczuk	Governor	reappointed	7/28/2011
Billings			7/1/2014
Qualifications (if required): person with a hearing disability			
Ms. Patricia Ingalls	Governor	Kalarchik	7/28/2011
Butte			7/1/2014
Qualifications (if required): audiologist			
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice)			
Ms. Maureen Connor	Governor	reappointed	7/31/2011
Philipsburg			7/31/2013
Qualifications (if required): resident of the Upper Clark Fork River Basin			
Ms. Katherine Eccleston	Governor	reappointed	7/31/2011
Anaconda			7/31/2013
Qualifications (if required): resident of the Upper Clark Fork River Basin			
Mr. Jim Kambich	Governor	reappointed	7/31/2011
Butte			7/31/2013
Qualifications (if required): resident of the Upper Clark Fork River Basin			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.			
Mr. Jon A. Krutar	Governor	reappointed	7/31/2011
Helena			7/31/2013
Qualifications (if required): resident of the Upper Clark Fork River Basin			
Mr. Joe Maurier	Governor	reappointed	7/31/2011
Helena			7/31/2013
Qualifications (if required): Director of the Department of Fish Wildlife and Parks			
Mr. Michael McLean	Governor	reappointed	7/31/2011
Anaconda			7/31/2013
Qualifications (if required): resident of the Upper Clark Fork River Basin			
Mr. Roy O'Connor	Governor	reappointed	7/31/2011
Missoula			7/31/2013
Qualifications (if required): resident of the Upper Clark Fork River Basin			
Director Richard Opper	Governor	reappointed	7/31/2011
Helena			7/31/2013
Qualifications (if required): Director of the Department of Environmental Quality			
Mr. Elton Ringsak	Governor	reappointed	7/31/2011
Butte			7/31/2013
Qualifications (if required): resident of the Upper Clark Fork River Basin			
Mr. William Rossbach	Governor	reappointed	7/31/2011
Missoula			7/31/2013
Qualifications (if required): resident of the Upper Clark Fork River Basin			

BOARD AND COUNCIL APPOINTEES FROM JULY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Upper Clark Fork River Basin Remediation and Restoration Advisory Council (Justice) cont.			
Director Mary Sexton	Governor	reappointed	7/31/2011
Helena			7/31/2013
Qualifications (if required): Director of the Department of Natural Resources and Conservation			

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Alternative Health Care Board (Labor and Industry)		
Dr. Kathleen Stevens, Billings Qualifications (if required): medical doctor	Governor	9/1/2011
Dr. Nancy Aagenes, Helena Qualifications (if required): naturopathic physician	Governor	9/1/2011
Board of Athletic Trainers (Labor and Industry)		
Mr. Brian Coble, Helena Qualifications (if required): athletic trainer in a post-secondary school	Governor	10/1/2011
Mr. Christopher Heard, Butte Qualifications (if required): athletic trainer in a health care facility	Governor	10/1/2011
Dr. Derrick Johnson, Butte Qualifications (if required): physician	Governor	10/1/2011
Board of Barbers and Cosmetologists (Labor and Industry)		
Ms. Karan Charles, Miles City Qualifications (if required): barber	Governor	10/1/2011
Ms. Juanita Mace, Billings Qualifications (if required): cosmetologist	Governor	10/1/2011
Board of Medical Examiners (Labor and Industry)		
Rep. Mary Anne Guggenheim, Helena Qualifications (if required): doctor of medicine	Governor	9/1/2011

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Board of Medical Examiners (Labor and Industry) cont.		
Dr. James D. Upchurch, Crow Agency	Governor	9/1/2011
Qualifications (if required): doctor of medicine		
Board of Outfitters (Labor and Industry)		
Rep. Carol Gibson, Billings	Governor	10/1/2011
Qualifications (if required): sportsperson		
Mr. John R. Redman, Sidney	Governor	10/1/2011
Qualifications (if required): public representative		
Mr. Thomas Sather, Bozeman	Governor	10/1/2011
Qualifications (if required): sportsperson		
Mr. Tim Linehan, Troy	Governor	10/1/2011
Qualifications (if required): big game outfitter		
Board of Psychologists (Labor and Industry)		
Dr. Marla Lemons, Butte	Governor	9/1/2011
Qualifications (if required): public health psychologist		
Board of Water Well Contractors (Natural Resources and Conservation)		
Mr. Kirk Waren, Butte	Director	10/5/2011
Qualifications (if required): none specified		
Mr. Herrick Jeffrey, Helena	Deputy Director	9/4/2011
Qualifications (if required): none specified		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Building Codes Council (Labor and Industry)		
Commissioner Dave Gallik, Helena Qualifications (if required): public member	Governor	10/1/2011
Mr. David Broquist, Great Falls Qualifications (if required): professional engineer	Governor	10/1/2011
Mr. Scott Lemert, Livingston Qualifications (if required): representative of the Board of Plumbers	Governor	10/1/2011
Mr. Mick Wonnacott, Butte Qualifications (if required): building contractor industry representative	Governor	10/1/2011
Mr. Mike Seaman, Kalispell Qualifications (if required): manufactured housing industry representative	Governor	10/1/2011
Mr. Rodney N. Driver, Bigfork Qualifications (if required): elevator mechanic	Governor	10/1/2011
Mr. Allen Lorenz, Helena Qualifications (if required): state fire marshall	Governor	10/1/2011
Director Anna Whiting-Sorrell, Helena Qualifications (if required): DPHHS Director	Governor	10/1/2011
Mr. Steven Meismer, Missoula Qualifications (if required): building inspector	Governor	10/1/2011

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Building Codes Council (Labor and Industry) cont.		
Ms. Deborah Kane, Bozeman	Governor	10/1/2011
Qualifications (if required): licensed architect		
Mr. Ron Bartsch, Montana City	Governor	10/1/2011
Qualifications (if required): home building industry representative		
Mr. Bill Qualls, East Helena	Governor	10/1/2011
Qualifications (if required): representative of the Board of Electricians		
Capital Finance Advisory Council (Administration)		
Mr. Fred Flanders, Helena	Governor	10/29/2011
Qualifications (if required): Montana Higher Education Student Assistance Corporation representative		
Rep David Ewer, Helena	Governor	10/29/2011
Qualifications (if required): Budget Director		
Secretary Linda McCulloch, Helena	Governor	10/29/2011
Qualifications (if required): Secretary of State		
Director Janet Kelly, Helena	Governor	10/29/2011
Qualifications (if required): Director of the Department of Administration		
Sen. Trudi Schmidt, Great Falls	Governor	10/29/2011
Qualifications (if required): Legislator		
Director Mary Sexton, Helena	Governor	10/29/2011
Qualifications (if required): Department of Natural Resources Director		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Capital Finance Advisory Council (Administration) cont.		
Director Anthony Preite, Helena Qualifications (if required): Department of Commerce director	Governor	10/29/2011
Director Richard Opper, Helena Qualifications (if required): Department of Environmental Quality Director	Governor	10/29/2011
Director Jim Lynch, Helena Qualifications (if required): Department of Transportation Director	Governor	10/29/2011
Mr J. P. Crowley, Helena Qualifications (if required): Board of Investments representative	Governor	10/29/2011
Ms. Teresa Cohea, Helena Qualifications (if required): Board of Investments representative	Governor	10/29/2011
Mr. Stephen M Barrett, Bozeman Qualifications (if required): Budget Director	Governor	10/29/2011
Mr. Bill Kearns, Townsend Qualifications (if required): Facility Finance Authority representative	Governor	10/29/2011
Attorney General Steve Bullock, Helena Qualifications (if required): Attorney General	Governor	10/29/2011
Rep. Roy Hollandsworth, Brady Qualifications (if required): Legislator	Governor	10/29/2011

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Historical Preservation Review Board (Historical Society)		
Mr. Robert Valach, Lewistown Qualifications (if required): public representative	Governor	10/1/2011
Ms. Miki Wilde, East Helena Qualifications (if required): public representative	Governor	10/1/2011
Ms. Donna Coate, Forsyth Qualifications (if required): public representative	Governor	10/1/2011
Historical Records Advisory Council (Historical Society)		
Mr. Kim Allen Scott, Bozeman Qualifications (if required): public representative	Governor	10/9/2011
Ms. Judy Ellinghausen, Great Falls Qualifications (if required): public representative	Governor	10/9/2011
Ms. Peggy Gow, Deer Lodge Qualifications (if required): public representative	Governor	10/9/2011
Ms. Samantha K Pierson, Libby Qualifications (if required): public representative	Governor	10/9/2011
Ms. Donna McCrea, Missoula Qualifications (if required): public representative	Governor	10/9/2011

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Historical Records Advisory Council (Historical Society) cont.		
Ms. Jodie Foley, Helena	Governor	10/9/2011
Qualifications (if required): state archivist		
Ms. Faith Bad Bear-Bartlett, Crow Agency	Governor	10/9/2011
Qualifications (if required): public representative		
Mr. Jon Ille, Hardin	Governor	10/9/2011
Qualifications (if required): public representative		
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Mr. Don Walker, Glendive	Director	9/17/2011
Qualifications (if required): forage producer representative		
Ms. Michelle Miller, Billings	Director	9/17/2011
Qualifications (if required): feed pellets/cube products representative		
Ms. Jennifer Cramer, Hysham	Director	9/17/2011
Qualifications (if required): eastern county weed district representative		
Mr. Tom Benson, Pablo	Director	9/17/2011
Qualifications (if required): western county weed district representative		
Montana's Poet Laureate (Labor and Industry)		
Mr. Henry Real Bird, Garryowen	Governor	9/23/2011
Qualifications (if required): Montana poet		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Prescription Drug Abuse Advisory Council (Justice)		
Judge Thomas M. McKittrick, Great Falls Qualifications (if required): none specified	Attorney General	10/2/2011
Sen. Fred R. Van Valkenburg, Missoula Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. James R. Cashell, Bozeman Qualifications (if required): none specified	Attorney General	10/2/2011
Sen. Trudi Schmidt, Great Falls Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Ryan C. Rusche, Wolf Point Qualifications (if required): none specified	Attorney General	10/2/2011
Rep. Tom Berry, Roundup Qualifications (if required): none specified	Attorney General	10/2/2011
Ms. Starla Blank, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Joseph Doyle, Hardin Qualifications (if required): none specified	Attorney General	10/2/2011
Dr. Bill Gallea, Helena Qualifications (if required): none specified	Attorney General	10/2/2011

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Prescription Drug Abuse Advisory Council (Justice) cont.		
Mr. Wyatt Glade, Miles City Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Mark A. Long, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Michael Metzger, Billings Qualifications (if required): none specified	Attorney General	10/2/2011
Dr. Andrew Michel, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Ms. Trudy Mizner, Missoula Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Mark Muir, Missoula Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Russ Papke, Kalispell Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Karl Rosston, Helena Qualifications (if required): none specified	Attorney General	10/2/2011
Mr. Rich St John, Billings Qualifications (if required): none specified	Attorney General	10/2/2011

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
State Emergency Response Commission (Military Affairs)		
Mr. Charles Mazurek, Clancy	Governor	10/1/2011
Qualifications (if required): representative of the insurance industry		
Mr. Tom Ellerhoff, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Department of Environmental Quality		
Mr. Bruce Suenram, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Department of Natural Resources and Conservation		
Mr. William T. Rhoads, Butte	Governor	10/1/2011
Qualifications (if required): representative of a utility company		
Sheriff Clifford Brophy, Columbus	Governor	10/1/2011
Qualifications (if required): representative of a law enforcement association		
Mr. David W. Mason, Helena	Governor	10/1/2011
Qualifications (if required): representative of the fire services training school		
Ms. Stephanie Nelson, Bozeman	Governor	10/1/2011
Qualifications (if required): representative of a public health organization		
Mr. Royce A. Shipley, Great Falls	Governor	10/1/2011
Qualifications (if required): representative of the US Air Force		
Mr. Dan McGowan, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Disaster and Emergency Services		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
State Emergency Response Commission (Military Affairs) cont.		
Mr. Thomas Kuntz, Red Lodge	Governor	10/1/2011
Qualifications (if required): representative of a fire service association		
Mr. Jim Johnson, Missoula	Governor	10/1/2011
Qualifications (if required): representative of a railroad company		
Ms. Jolene Jacobson, Polson	Governor	10/1/2011
Qualifications (if required): representative of a tribal emergency response commission		
Ms. Sally Buckles, Boulder	Governor	10/1/2011
Qualifications (if required): representative of an emergency medical services association		
Commissioner Ed Tinsley, Fort Harrison	Governor	10/1/2011
Qualifications (if required): representative of the Disaster and Emergency Services		
Mr. Michael Vogel, Bozeman	Governor	10/1/2011
Qualifications (if required): representative of the university system		
Mr. Joe Marcotte, Billings	Governor	10/1/2011
Qualifications (if required): representative of Montana hospitals		
Mr. Jim DeTienne, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Emergency Medical Services and Trauma Services Section/DPHHS		
Major Don Emerson, Fort Harison	Governor	10/1/2011
Qualifications (if required): representative of the Montana National Guard		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
State Emergency Response Commission (Military Affairs) cont.		
Ms. Sheena Wilson, Helena	Governor	10/1/2011
Qualifications (if required): representative of the governor's office		
Mr. Kerry O'Connell, Big Timber	Governor	10/1/2011
Qualifications (if required): representative of an emergency management association		
Ms. Cheryl Richman, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Department of Transportation		
Mr. Ron Jendro, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Department of Fish Wildlife and Parks		
Captain Tom Butler, Belgrade	Governor	10/1/2011
Qualifications (if required): representative of the Department of Justice		
Mr. Joe Lamson, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Department of Natural Resources and Conservation		
Ms. Mary Simmons, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Department of Public Health and Human Services		
Mr. Ron Zellar, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Department of Agriculture		
Mr. Jim Lewis, Missoula	Governor	10/1/2011
Qualifications (if required): representative of a trucking association		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
State Emergency Response Commission (Military Affairs) cont.		
Mr. Michael Mercer, Great Falls	Governor	10/1/2011
Qualifications (if required): representative of the National Weather Service		
Commissioner Joe Brenneman, Kalispell	Governor	10/1/2011
Qualifications (if required): representative of the association of counties		
Ms. Cindy McIlveen, Butte	Governor	10/1/2011
Qualifications (if required): representative of the league of cities and towns		
Mr. Bob Levitan, Helena	Governor	10/1/2011
Qualifications (if required): representative of the Department of Natural Resources and Conservation		
Ms. Susan Taylor, Billings	Governor	10/1/2011
Qualifications (if required): representative of petroleum industry		
Mr. Pete Lawrenson, Missoula	Governor	10/1/2011
Qualifications (if required): representative of a railroad company		
Mr. Dale Nelson, Ronan	Governor	10/1/2011
Qualifications (if required): representative of a tribal emergency response commission		
Trauma Care Committee (Public Health and Human Services)		
Mr. Joseph D. Hansen, Big Timber	Governor	11/2/2011
Qualifications (if required): representative of the Eastern Region Trauma Advisory Council		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Trauma Care Committee (Public Health and Human Services) cont.		
Mr. Tim Sinton, Choteau	Governor	11/2/2011
Qualifications (if required): representative of the Central Region Trauma Advisory Council		
Ms. Pauline Linnell, Bigfork	Governor	11/2/2011
Qualifications (if required): representative of the Montana Emergency Medical Services Association		
Dr. Dennis Maier, Billings	Governor	11/2/2011
Qualifications (if required): representative of the Montana Committee on Trauma/ACS		
Ms. Elaine Schuchard, Glasgow	Governor	11/2/2011
Qualifications (if required): representative of the Emergency Nurses Association		
Ms. Kristen Lowery, Deer Lodge	Governor	11/2/2011
Qualifications (if required): representative of the Montana Trauma Coordinators		
Ms. Jennifer Thuesen, Polson	Governor	11/2/2011
Qualifications (if required): representative of the Western Region Trauma Advisory Council		
Mr. Justin Grohs, Great Falls	Governor	11/2/2011
Qualifications (if required): representative of private ambulances		
Dr. Andrew Michel, East Helena	Governor	11/2/2011
Qualifications (if required): representative of the American College of Emergency Physicians		
Ms. Leah Emerson, Ronan	Governor	11/2/2011
Qualifications (if required): representative of the Western Region Trauma Advisory Council		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Trauma Care Committee (Public Health and Human Services) cont.		
Mr. Sam Miller, Bozeman	Governor	11/2/2011
Qualifications (if required): representative of the Eastern Region Trauma Advisory Council		
Vocational Rehabilitation Council (Public Health and Human Services)		
Ms. Shaunda Albert, Pablo	Governor	10/1/2011
Qualifications (if required): business representative		
Ms. Maureen Kenneally, Butte	Governor	10/1/2011
Qualifications (if required): representative of the State Workforce Investment Board		
Ms. Jacqueline Colombe, Basin	Governor	10/1/2011
Qualifications (if required): representative of the disabilities community		
Mr. Dan Burke, Missoula	Governor	10/1/2011
Qualifications (if required): representative of the disabilities community		
Ms. Michelle Williamson, Pablo	Governor	10/1/2011
Qualifications (if required): representative of the disabilities council		
Ms. Sharla LaFountain, Lewistown	Governor	10/1/2011
Qualifications (if required): representative of the disabilities community		
Ms. Faith Dawson, Missoula	Governor	10/1/2011
Qualifications (if required): representative of the disabilities community		

VACANCIES ON BOARDS AND COUNCILS -- September 1, 2011 through November 30, 2011

Board/current position holder	Appointed by	Term end
Vocational Rehabilitation Council (Public Health and Human Services) cont.		
Ms. Dalayna Faught, Missoula	Governor	10/1/2011
Qualifications (if required): vocational rehabilitation counselor		
Ms. Lois McElravy, Missoula	Governor	10/1/2011
Qualifications (if required): representative of the disabilities council		
Mr. Richard Quillin, Whitefish	Governor	10/1/2011
Qualifications (if required): representative of the business community		
Water and Waste Water Operators' Advisory Council (Environmental Quality)		
Dr. Carol Reifschneider, Havre	Governor	10/16/2011
Qualifications (if required): university faculty member		
Workers' Compensation Court Judge (not listed)		
Mr. James Shea, Missoula	Governor	9/6/2011
Qualifications (if required): none specified		