

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 22

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.2.503 pertaining to the) PROPOSED AMENDMENT
administration and submission of)
applications of the Quality Schools)
Grant Program)

TO: All Concerned Persons

1. On December 15, 2011, at 1:00 p.m., the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on December 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Penney Clark, Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549; telephone (406) 841-2800; fax (406) 841-2878; TDD (406) 841-2702; or e-mail pclark2@mt.gov.

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

8.2.503 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION AND SUBMISSION OF APPLICATIONS OF THE QUALITY SCHOOLS GRANT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Quality Schools Grant Program Application Guidelines and Administration Manual as rules for the Quality Schools Grant Program - Projects (~~January 2010~~) (January 2012).

(2) remains the same.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549, or on the Quality Schools Grant Program web site at ~~http://commerce.mt.gov/QualitySchools~~ http://commerce.mt.gov/qualityschools/default.mcp.x.

AUTH: 90-6-819, MCA

IMP: 90-6-819, MCA

REASON: It is reasonably necessary to amend this rule because public school districts must have these guidelines available before the entities may apply to the

department for project financial assistance under the Quality Schools program. The guidelines describe the department requirements with which public school districts must comply in order to apply for, receive, and administer Quality School project grant funds.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Department of Commerce, Quality Schools Grant Program, 301 South Park Avenue, P.O. Box 200549, Helena, Montana 59620-0549; telephone (406) 841-2800; fax (406) 841-2878; or e-mail pclark2@mt.gov, and must be received no later than 5:00 p.m., December 23, 2011.

5. Jennifer Olson, Grants Bureau Chief, Department of Commerce, has been designated to preside over and conduct this hearing.

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

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

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

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

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State November 14, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 8.94.3815 pertaining to the) PROPOSED AMENDMENT
Treasure State Endowment Program)

TO: All Concerned Persons

1. On December 15, 2011, at 10:00 a.m., the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building, at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on December 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Becky Anseth, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana, 59620-0523; telephone (406) 841-2865; fax (406) 841-2771; TDD (406) 841-2702; or e-mail banseth@mt.gov.

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

8.94.3815 INCORPORATION BY REFERENCE OF RULES GOVERNING THE SUBMISSION AND REVIEW OF APPLICATIONS FOR FUNDING UNDER THE TREASURE STATE ENDOWMENT PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Treasure State Endowment Program Project Application Guidelines dated ~~January 2010~~ November 2011 as rules governing the submission and review of applications under the TSEP program.

(2) remains the same.

(3) Copies of the regulation adopted by reference in (1) can be viewed on the department's web site at http://comdev.mt.gov/CDD_TSEP_Grants.asp <http://comdev.mt.gov/TSEP/default.mcp.x>, or may be obtained from the Department of Commerce, Community Development Division, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-6-710, MCA

IMP: 90-6-710, MCA

REASON: It is reasonably necessary to amend this rule because grantees must have these application guidelines before the eligible entities may apply to the department for financial assistance. The guidelines describe the types of projects that are eligible for TSEP project grants. They also describe the review process by

which the department evaluates applications and the funding process which is completed through the legislative process.

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: Becky Anseth, Community Development Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2865; fax (406) 841-2771; or e-mail banseth@mt.gov, and must be received no later than 5:00 p.m., December 23, 2011.

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

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

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

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

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

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State November 14, 2011.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I through NEW RULE X and) PROPOSED ADOPTION AND
the amendment of ARM 10.13.307,) AMENDMENT
10.13.310 through 10.13.313)
pertaining to traffic education)

TO: All Concerned Persons

1. On December 20, 2011, at 9:00 a.m., the Superintendent of Public Instruction will hold a public hearing in the Superintendent's Conference Room at the Office of Public Instruction building located at 1227 11th Avenue, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The Superintendent of Public Instruction 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 Office of Public Instruction no later than 5:00 p.m. on Monday, December 15, 2011 to advise us of the nature of the accommodation that you need. Please contact Beverly Marlow, Office of Public Instruction, P.O. Box 202501, Helena Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov.

3. Statement of Reasonable Necessity: The Superintendent of Public Instruction has determined that it is reasonable and necessary to adopt and amend the above-stated rules to implement legislation requiring graduated drivers' licenses, to clarify responsibilities and coordination with the Department of Justice's driver license statutes and rule, to provide necessary details for driver education program requirements including content standards and benchmarks, and for clarification and consistency.

Driving is an activity that affects the whole community. A successful program, therefore, requires the effective involvement of parents/guardians, schools, communities, and government agencies. Benchmarks define the expectations for students' knowledge, skills, and abilities. Performance standards define the quality of student performance and describe the performance to be demonstrated. Performance level descriptors provide a picture or profile of student achievement at the four performance levels: competent, proficient, nearing proficiency, and novice. Rules for content standards and benchmarks are required for curricula development, program approval, and student training.

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

NEW RULE I TRAFFIC EDUCATION CONTENT, BENCHMARKS, AND PERFORMANCE STANDARDS (1) The content and performance standards shall be used by school districts to develop local curriculum and assessment to provide

structured opportunities for students to learn, acquire, and demonstrate legal and safe driving skills, habits, and responsibilities through guided practice and resulting in a lifelong commitment to learning the driving task.

(2) Benchmarks define the expectations for students' knowledge, skills, and abilities.

(3) Performance standards define the quality of student performance and describe the performance to be demonstrated, providing a picture or profile of student achievement at the four performance levels: competent, proficient, nearing proficiency, and novice.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE II TRAFFIC EDUCATION CONTENT STANDARD 1 AND BENCHMARKS - LAWS AND HIGHWAY SYSTEM (1) To satisfy the requirements of traffic education content standard 1, a student must demonstrate knowledge and understanding of the highway transportation system and the laws governing the operation of a motor vehicle.

(2) The benchmarks for traffic education content standard 1 for a student upon completion of the program are the ability to:

(a) know the laws outlined in the Montana Driver's Manual;

(b) understand the laws outlined in the Montana Driver's Manual; and

(c) consistently demonstrate knowledge and understanding by responsible adherence to highway transportation system traffic laws and control devices.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE III TRAFFIC EDUCATION CONTENT STANDARD 2 AND BENCHMARKS - RESPONSIBILITY (1) To satisfy the requirements of traffic education content standard 2, a student must act responsibly by consistently demonstrating a positive attitude and respect for other roadway users, by obeying laws, and making an observable commitment to safe behaviors and good decision making.

(2) The benchmarks for traffic education content standard 2 for a student upon completion are the ability to:

(a) recognize the importance of making safe and responsible decisions for owning and operating a motor vehicle;

(b) demonstrate the ability to make appropriate decisions while operating a motor vehicle;

(c) consistently display respect for other users of the highway transportation system; and

(d) demonstrate positive habits and attitudes for responsible driving.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE IV TRAFFIC EDUCATION CONTENT STANDARD 3 AND BENCHMARKS - VISUAL SKILLS

(1) To satisfy the requirements of traffic education content standard 3, a student must demonstrate and analyze the importance of proper visual skills for the safe operation of a motor vehicle.

(2) The benchmarks for traffic education content standard 3 for a student upon completion are the ability to:

- (a) know proper visual skills for operating a motor vehicle;
- (b) communicate and explain proper visual skills for operating a motor vehicle;
- (c) demonstrate the use of proper visual skills for operating a motor vehicle; and
- (d) demonstrate positive habits and attitudes for consistent proper visual skills.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE V TRAFFIC EDUCATION CONTENT STANDARD 4 AND BENCHMARKS - VEHICLE CONTROL (1) To satisfy the requirements of traffic education content standard 4, a student must demonstrate skill in maneuvering and controlling motor vehicles smoothly, efficiently, and safely.

(2) The benchmarks for traffic education content standard 4 for a student upon completion are the ability to:

- (a) demonstrate smooth, safe, and efficient operation of a motor vehicle; and
- (b) demonstrate positive habits and attitudes for safe, efficient, and smooth vehicle operation.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE VI TRAFFIC EDUCATION CONTENT STANDARD 5 AND BENCHMARKS - COMMUNICATION

(1) To satisfy the requirements of traffic education content standard 5, a student must communicate and interact with the highway transportation system and other roadway users utilizing prescribed, effective, and safe practices.

(2) The benchmarks for traffic education content standard 5 for a student upon completion are the ability to:

- (a) consistently communicate their driving intentions (i.e., use of lights, vehicle position, and personal signals);
- (b) adjust their driver behavior based on observation of the highway transportation system and other roadway users;
- (c) adjust communication of driving intentions (i.e., use of lights, vehicle position, and personal signals) based on observation of the highway transportation system and other users; and
- (d) demonstrate positive habits and attitudes for effective communication.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE VII TRAFFIC EDUCATION CONTENT STANDARD 6 AND BENCHMARKS - RISK MANAGEMENT (1) To satisfy the requirements of traffic education content standard 6, a student must demonstrate and safely apply driver risk-managing (defensive driving) strategies, behaviors, and habits, including measures to maintain distraction-free driving.

(2) The benchmarks for traffic education content standard 6 for a student upon completion are the ability to:

- (a) understand driver risk-management principles;
- (b) demonstrate driver risk-management strategies; and
- (c) demonstrate positive habits and attitudes for effective driver risk-management.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE VIII TRAFFIC EDUCATION CONTENT STANDARD 7 AND BENCHMARKS - LIFELONG LEARNING (1) To satisfy the requirements of traffic education content standard 7, a student must advocate for personal and public approaches to lifelong learning of the driving task.

(2) The benchmarks for traffic education content standard 7 for a student upon completion are the ability to:

- (a) identify and use a range of learning strategies required to acquire or retain knowledge, positive driving habits, and driving skills for lifelong learning;
- (b) establish learning goals that are based on an understanding of one's own current and future learning needs; and
- (c) demonstrate knowledge and ability to make informed decisions required for positive driving habits, effective performance, and adaptation to change.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE IX TRAFFIC EDUCATION CONTENT STANDARD 8 AND BENCHMARKS - DRIVING EXPERIENCE (1) To satisfy the requirements of traffic education content standard 7, a student must acquire behind-the-wheel driving experience under the direction of a Montana-approved driver education teacher. Students shall be encouraged to obtain additional experience under the direction of a parent or guardian with a valid driver license in accordance with Title 61, chapter 5, part 1, MCA.

(2) The benchmarks for traffic education content standard 8 for a student upon completion are the ability to:

- (a) acquire at least the minimum number of behind-the-wheel hours over at least the minimum number of days, as required by law, with a Montana-approved driver education teacher; and
- (b) acquire additional behind-the-wheel driving experience with their parent or guardian's assistance in a variety of driving situations (i.e., night, adverse

weather, gravel road, etc.).

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

NEW RULE X TRAFFIC EDUCATION PERFORMANCE STANDARDS

(1) Traffic education performance standards describe students' knowledge, skills, and abilities in the driver education content area. These descriptions provide a picture or profile of student achievement at the four performance levels: competent, proficient, nearing proficiency, and novice. These standards are not exhaustive indications of performance, but demonstrate a range of skill and knowledge relative to the established standards and identified benchmarks.

(2) A driver at the competent level:

(a) exhibits strong knowledge and driving skills related to safely navigating roadways and interacting with other roadway users;

(b) shows consistent performance, driving behavior that is largely automatic, and exhibits driving behaviors safely and correctly in many different kinds of driving situations;

(c) knows and adheres to the laws governing driving in Montana as demonstrated by habitually and consistently following the laws while driving;

(d) knows and adheres to the highway transportation system as demonstrated by habitually driving consistent with the system;

(e) always responsibly, properly, and smoothly operates a vehicle;

(f) consistently researches ideas and opportunities to increase personal knowledge of the vehicle, the highway transportation system, and the driving task;

(g) habitually knows and responsibly applies defensive driving principles;

(h) has acquired behind-the-wheel driving experience in various environments and road conditions for a period of time that exceeds the state minimum standards and graduated driver license requirements; and

(i) resists peer pressure, which may negatively influence good, responsible driving behavior.

(3) A driver at the proficient level:

(a) exhibits solid academic and driving skill performance for each benchmark;

(b) has demonstrated competency over challenging subject matter, including subject-matter knowledge, application of such knowledge to real-world situations, and analytical skills appropriate to safe driving;

(c) shows more consistent performance, but still uses conscious effort to demonstrate responsible and safe driving behavior;

(d) demonstrates and consistently applies laws pertaining to driving;

(e) consistently uses risk-managing driving principles;

(f) demonstrates mastery of safe and responsible driving habits and attitudes;

(g) performs satisfactorily in obtaining the minimum number of behind-the-wheel hours with an approved driver education teacher;

(h) consistently interacts appropriately with other operators and traffic in various driving situations;

(i) demonstrates basic skills needed to interact safely with the highway transportation system;

- (j) demonstrates appropriate visual skills needed to safely operate a motor vehicle;
 - (k) demonstrates habits and attitudes necessary to communicate and interact with the highway transportation system utilizing effective, safe practices; and
 - (l) understands the laws that pertain to owning and operating a motor vehicle.
- (4) A driver at the nearing proficiency level:
- (a) exhibits partial mastery or prerequisite knowledge and driving skills fundamental for proficient work at each benchmark;
 - (b) demonstrates partial mastery of the knowledge and skills fundamental for responsible and safe driving;
 - (c) shows inconsistent performance and must use conscious effort;
 - (d) understands that the laws of Montana, counties, and cities can differ;
 - (e) demonstrates a limited ability to use risk-managing driving principles;
 - (f) shows limited knowledge of motor vehicle laws while driving a motor vehicle;
 - (g) most of the time shows proficiency of safe and responsible driving techniques and attitudes;
 - (h) performs in a limited manner after obtaining the minimum number of behind-the-wheel hours with an approved driver education teacher;
 - (i) with assistance, can use basic skills needed to interact safely with the highway transportation system; and
 - (j) with assistance, demonstrates the visual skills needed to operate a motor vehicle.
- (5) A driver at the novice level:
- (a) is beginning to attain the prerequisite knowledge and driving skills that are fundamental for work at each benchmark;
 - (b) is just beginning to acquire the knowledge and skill needed for safe and responsible driving;
 - (c) shows weak driving skills, must use full concentration, and is easily distracted;
 - (d) struggles with traffic in various driving situations, even with assistance;
 - (e) is rarely able to use the risk-managing driving skills;
 - (f) has difficulty interacting with others in a safe, courteous manner;
 - (g) demonstrates limited understanding of the highway transportation system;
 - (h) rarely demonstrates the visual skills needed to operate a motor vehicle;
 - (i) shows little understanding of the local and state laws of Montana;
 - (j) with assistance, has begun to drive in rural, urban, and residential environments;
 - (k) has begun to learn signs, signals, and pavement markings;
 - (l) has difficulty in comprehending and applying vehicle laws while driving a motor vehicle within a supervised environment;
 - (m) demonstrates a limited proficiency of safe and responsible driving techniques and attitudes; and
 - (n) performs at a beginning level after obtaining the minimum number of behind-the-wheel hours with an approved driver education teacher.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

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

10.13.307 PROGRAM REQUIREMENTS - DEFINITIONS (1) An approved traffic education program for young novice drivers ~~shall~~ must:

(a) be provided only by school districts operating a middle school, junior high school, or high school;

(b) remains the same.

(c) be taught by a teacher(s) of traffic education approved by the Superintendent of Public Instruction;

(d) ~~be~~ use a curriculum that meets the content standards and benchmarks of [NEW RULE II - X] and includes the dangers of physical and cognitive distractions while driving as required by 61-5-135, MCA and is based on a curriculum guide, or guides, readily available for review from the sSuperintendent of public instruction or traffic education staff. A student must meet the minimum performance objectives identified by the local school district and fulfill the state required hourly and minimum student contact day requirements contained in this part, in order to be considered as having successfully completed the program;

(e) use lesson plans that maximize student-centered learning activities and integrate objective-based route plans for behind-the-wheel instruction;

(f) base the successful completion of driver education for each student on criteria identified by the local school district; the minimum number of hours and student contact days; and other applicable standards required in this part;

~~(e)~~ (g) be scheduled so that a sufficient number of courses are provided to allow every eligible student within the school's geographic jurisdiction an equitable opportunity to enroll pursuant to 61-5-106, MCA;

~~(f)~~ (h) consist of at least 60 hours of structured learning experiences:

~~(i)~~ (i) scheduled over no less than ~~20~~ 25 student contact days for each student;

~~(ii)~~ (ii) beginning September 1, 2002, scheduled over no less than 21 student-contact days;

~~(iii)~~ (iii) beginning September 1, 2003, scheduled over no less than 23 student-contact days;

~~(iv)~~ (iv) beginning September 1, 2004, scheduled over no less than 25 student-contact days; and

~~(v)~~ (v) including no fewer than six hours of behind-the-wheel, in-traffic driving instruction; and

~~(vi)~~ (vi) effective September 1, 2002, including no fewer than six hours of behind-the-wheel, in-traffic driving instruction by an Office of Public Instruction approved traffic education teacher scheduled over no less than six student contact days; of which:

~~(g)~~ (g) to meet the requirements in (1)(f):

~~(i)~~ (i) twelve hours of simulation may be substituted for two hours of behind-the-wheel instruction or six hours of simulation may be substituted for one hour of behind-the-wheel instruction for those schools having traffic simulator equipment approved by the Office of Public Instruction; or

~~(ii)~~ (ii) up to 12 of the 60 hours required hereunder may be satisfied by in-vehicle

observation of an approved teacher instructing another novice driver;

~~(h)~~ (i) provide behind-the-wheel instruction only to students who are currently participating in classroom instruction. All traffic education program phases must be conducted using concurrent or integrated scheduling;

~~(i)~~ (j) use only dual-control vehicles that are equipped according to vehicle standards in ARM 10.13.311 established by the superintendent of public instruction;

~~(j)~~ (k) have property and liability insurance sufficient to protect the school, teachers, students, the public, the vehicle(s), and its owner;

~~(k)~~ (l) use the ~~e~~Office of p~~Public i~~nstruction form entitled "School/Dealer Vehicle Use Agreement" (form TE02) or the school's equivalent form when a traffic education loan vehicle is procured from a vehicle dealer; ~~and~~

~~(l)~~ (m) complete all reports and documents required by the Office of Public Instruction and the Department of Justice, Motor Vehicle Division in the time frames required; ~~and~~

(n) include a parent meeting at the beginning of the driver education class that covers:

(i) course schedule, requirements, and expectations of the teen student and the parents/guardians;

(ii) information on Montana's graduated driver licensing (GDL) law;

(iii) best practices in GDL; and

(iv) parental involvement, including:

(A) managing their teen's graduated learning process through each stage of the GDL;

(B) tips on supervising the driving practice during the initial permit phase;

(C) tips to determine when their teen is ready for the next step in driving;

(D) objectives for success and significant hazards associated with each driving phase; and

(E) information and tools to negotiate and adopt a written agreement between the teen and parent that reflects the expectations of both, including clearly defined restrictions, privileges, rules, and consequences that serve as a basis for the teen to earn and for the parent to grant progressively broader driving privileges; and

(v) any other information that the district considers important for the successful and safe completion of driver education.

~~(2) Schools wishing to depart from any of the above requirements must submit clear and complete explanation to the traffic education specialist, Office of Public Instruction, along with the school district application forms. Approval of a departure request must be granted before the program begins.~~

~~(3) A school's failure to comply with the program requirements outlined herein shall be grounds for the Superintendent ~~or~~ of Public Instruction to deny or revoke the approval of the school's traffic education program application.~~

~~(4)~~ (3) As used in subchapter 3, program standards and course requirements for traffic education, the following definitions apply:

(a) "Behind-the-wheel" means operator training by an OPI approved traffic education teacher in a vehicle that meets the requirements of ARM 10.13.311;

(b) "Concurrent scheduling" means scheduling the traffic education program without an interruption of instruction between classroom instruction and behind-the-wheel instruction;

(b) (c) "Eligible student" means any youth who lives within the geographic boundaries of the public school district whether or not they are enrolled in the public school district and who meets the age requirements of ARM 10.13.312 and has not yet reached 19 years of age on or before September 10 of the school year in which the student participates in traffic education.

(i) For the purposes of this rule, traffic education programs conducted during summer months shall be considered part of the school year immediately preceding the summer months;

(e) (d) "Equitable" means treating all eligible students fairly and without bias in the notification, enrollment, and class administration procedures associated with traffic education;

(e) "In-traffic" means operator training on roadways open to and with public traffic including up to 30 minutes of initial vehicle familiarization and training in little-used parking lots;

(d) (f) "Integrated scheduling" means scheduling the traffic education program to include a blend of classroom instruction and associated behind-the-wheel instruction during the duration of the traffic education course;

(g) "Student contact day" means a day that a teacher engages a student in a structured learning activity of the district's traffic education curriculum that applies toward the required minimum of 60 hours of instruction, whether it be classroom instruction, teacher-directed learning activities, observation, simulation, or behind-the-wheel instruction.

AUTH: 20-7-502, MCA

IMP: 20-7-502, 61-5-131, 61-5-132, 61-5-133, 61-5-134, 61-5-135, MCA

10.13.310 TRAFFIC EDUCATION TEACHERS (1) All teachers of traffic education shall have: must be familiar with current graduated driver licensing laws and best practices, be able to provide clear, correct, and appropriate information to driver education students and their parents, and have approval from the Superintendent of Public Instruction.

(2) Approval is contingent upon the applicant having:

(a) a qualifying, valid Montana teaching certificate educator license;

~~(b) approval as a teacher of traffic education issued by the superintendent of public instruction. Approval to teach traffic education shall be renewed with each renewal of the teacher's teaching certificate;~~

~~(c) (b) a minimum of eight semester or 12 quarter hours of credit course work in traffic safety education. This eight or 12-hour block which must include a driver task analysis (classroom instruction) and behind-the-wheel (developing vehicle operational skills) course; For each succeeding renewal of the teacher's teaching certificate, after initial approval, the teacher must accumulate four semester or six quarter hours of qualifying credit course work in traffic safety education, until such time as an endorsable minor, or its equivalent (20 semester or 30 quarter qualifying credits), has been completed;~~

(c) appropriate coursework for a Class 4B, 4C, or 7 Montana-approved educator license including teaching strategies and class management, but which does not count as a traffic education course requirement or elective toward the traffic

education minor; and

(d) a valid driver's license; and

(e) a local, state and national driving record free from all of the following: with a verified acceptable driving record from Montana and any other jurisdiction within which the applicant has been licensed to drive during the 10-year period immediately preceding the date of application. The driving record shall be free from:

(i) more than one moving traffic conviction violation, as defined in 61-11-203, MCA, within any 12-month period of the previous 36 months;

(ii) any alcohol related traffic conviction within the preceding 36 months any conviction for driving under the influence of alcohol or drugs (DUI) under 61-8-401, 61-8-406, or 61-8-410, MCA, within the preceding 36 months, or any conviction for a violation of a substantially similar offense from any other jurisdiction within the preceding 36 months;

(iii) any driver's license suspension, cancellation, revocation or denial within the preceding five years any evidence of a refusal to take a test under an implied consent law in this or any other jurisdiction, or a test result under an implied consent law in any other jurisdiction that shows an alcohol concentration of 0.08% or more while operating a noncommercial motor vehicle or an alcohol concentration of 0.04% or more while operating a commercial motor vehicle within the preceding 36 months;

(iv) any involvement in any fatal traffic accident during the previous five years resulting in: a conviction resulting in mandatory revocation or suspension of a driver's license for any of the following offenses in the previous five years:

(A) a conviction of a crime; or negligent homicide resulting from the operation of a motor vehicle;

(B) the imposition of civil liability; fleeing from or eluding a peace officer;

(C) negligent vehicular assault as defined in 45-5-205, MCA; or

(D) any felony in the commission of which a motor vehicle is used;

(v) judgment under 61-6-102(3), MCA resulting in the imposition of civil liability for involvement in any fatal traffic accident during the previous five years; or

(vi) a declaration of habitual traffic offender status pursuant to as defined in 61-11-201 et Seq. 61-1-203, MCA, during the previous ten years.

(2) (3) For the purposes of this rule, the definition of "conviction" includes, but is not limited to, entry of a guilty plea, "per se" convictions, pleas of "no contest" or similar pleas as stated in 61-5-213, MCA.

(4) Approval to teach traffic education shall be renewed with each renewal of the traffic education teacher's educator license. For each succeeding renewal of the educator license after initial approval, the teacher must accumulate at least four semester or six quarter hours of qualifying course work in traffic safety education until an endorsable minor or its equivalent (20 semester or 30 quarter qualifying credits) has been completed.

(3) (5) If a teacher's approval to teach traffic education has expired and the teacher has not met the renewal requirements of (1)(c) (4), the teacher may request an extension for approval to teach traffic education, subject to the following:

(a) A one-time, one-year emergency extension of approval may be granted for a teacher who received initial approval but who has not been able to complete the required four semester or six quarter traffic education credits for reapproval. The public school district or eligible nonpublic school shall submit a letter to the Office of Public

Instruction stating it has advertised for a traffic education teacher and that no qualified individuals were available to teach. In addition, the teacher for whom the school is seeking an emergency interim approval shall submit to the Office of Public Instruction a plan outlining how the teacher will satisfy the required coursework within the one-year extended period.

(b) A one-time, extenuating circumstance extension of approval may be granted for a period up to two years. The district and teacher shall submit the same documentation required in ~~(2 5)~~(a). In addition to the above documentation, the teacher shall submit a statement of a compelling reason why coursework deficiencies cannot be completed within one year, and shall assure the Office of Public Instruction that the teacher will complete the traffic education minor, or its equivalent, within the extension period.

(c) If other traffic education teachers are available to the school district, no emergency or extenuating circumstance extensions shall be granted. Both such extensions are contingent upon the other renewal requirements, including a valid driver's license, an approvable driving record, and successful renewal of the teacher's ~~Montana teaching certificate~~ educator license.

~~(4)~~ (6) A teacher's failure to maintain the requirements for traffic education teacher approval constitutes grounds for the immediate revocation of the approval to teach traffic education. Any revocation of approval may be appealed to the deputy Superintendent of Public Instruction within 30 days of the date of the notice of revocation of approval. The deputy superintendent shall review the revocation and either confirm or reverse the revocation. The deputy superintendent's decision is final.

AUTH: 20-7-502, MCA

IMP: 20-7-502, MCA

10.13.311 TRAFFIC EDUCATION VEHICLES (1) remains the same.

(2) Each traffic education vehicle must meet all federal motor vehicle safety standards (FMVSS) applicable to the vehicle used and be equipped, maintained, repaired, identified, insured, stored, and used according to the following:

(a) Required equipment:

(i) dual-control brake capable of bringing the vehicle to a complete emergency stop;

~~(ii) (all current federal motor vehicle safety standards (FMVSS));~~

~~(iii) two exterior mirrors and a teacher's rearview mirror;~~

~~(iv) (iii) first aid kit with contents appropriate for possible minor injuries sustained during instruction;~~

~~(v) (iv) flares or reflector warning devices;~~

~~(vi) (v) periodically inspected and operable fire extinguisher located in the passenger compartment;~~

~~(vii) (vi) accident report forms; and~~

~~(viii) (vii) operable safety belts for each occupant. All occupants shall utilize a safety belt at any time the vehicle is in motion.;~~

(viii) headlights must be in use at all times -- low or high beam, as appropriate -- during behind-the-wheel instruction.

(b) Recommended equipment:

- (i) power steering and power brakes;
- (ii) split or bucket_type front seat;
- (iii) four-door sedan;
- (iv) air conditioning;
- (v) tow cable;
- (vi) shovel, ax, and bucket;
- (vii) flashlight;
- (viii) rear window defogger; and
- (ix) ignition cut-off switch.

(c) The vehicles assigned for use in the traffic education program shall be kept in a safe operating condition. Maintenance and repair practices shall be in conformance with manufacturer's recommendations and with the policy established by the school district and participating dealer. Vehicles shall be given a periodic safety inspection by a knowledgeable person. The periodic inspection shall be conducted a minimum of once a year and prior to the annual commencement of behind-the-wheel instruction. The district shall maintain and make available for review by the Office of Public Instruction, or its designee, a record of the safety inspections, which include:

- (i) the date of the inspection;
- (ii) items inspected;
- (iii) condition of items inspected; and
- (iv) repairs made.

(d) All vehicles used in the traffic education program are to be identified by ~~either an overhead sign, a rear sign, or both. When the rear sign is used, it must not be so large as to obstruct a driver's rear vision. Decals provided by the dealers are used only in conjunction with one or both types of signs.~~ identified with a minimum of two signs stating: "Student Driver," "Driver Education," or "Driver Education Car" clearly visible and readable to pedestrians and other traffic.

(e) Vehicles provided by dealers on a loan basis shall be used for traffic education purposes only unless the dealer(s) gives written authorization to use the vehicle(s) for other purposes.

(f) "Exempt" license plates shall be obtained for a traffic education vehicle owned by, or provided to the district by a dealer. "Dealer" license plates are not to be used on these vehicles. Responsibility for securing exempt license plates rests with the school district. The school must obtain the appropriate application from the county treasurer. In the space provided for registered owner, type the name and telephone number of the school district and the name of the dealer providing the vehicle.

(g) Each practice-driving vehicle (including motorcycles) must be covered by an amount of insurance that meets or exceeds minimum requirements of local and state financial responsibility statutes.

~~(h) A common method for procuring practice driving vehicles is a school/dealer use agreement between the school or school district and a cooperative automobile dealer or dealer group. Each school district must use the form entitled "School/Dealer Vehicle Use Agreement" (TE02) or its equivalent. This agreement form is self-explanatory and can be obtained by writing to Traffic Education Programs, Office of Public Instruction, P.O. Box 202501, Helena, MT 59620-2501.~~

- (i) and (j) remain the same but are renumbered (h) and (i).

AUTH: 20-7-502, MCA
IMP: 20-7-502, MCA

10.13.312 STUDENT ENROLLMENT (1) The trustees of any district operating a public middle school, junior high school, or high school may establish and maintain a traffic education course for eligible students within the district's geographic jurisdiction, provided that students enrolled in the course will have reached their 15th birthday within six months of course completion as prescribed in 61-5-106, MCA. The district shall not be reimbursed for students completing the course at a younger age.

AUTH: 20-7-502, MCA
IMP: 20-7-502, MCA

10.13.313 LEARNER LICENSE (1) through (2)(a)(ii) remain the same.
(iii) the student presents the completed, notarized application and receipts for payment of the permit with proof of identity, certified birth certificate, proof of residency, and social security number to the examiner. The permit is valid for ~~six months~~ one year from the date of receipt.
(iv) through (2)(b)(ii) remain the same.
(iii) the student successfully completes an eye exam and written knowledge test through the CDTP school district as authorized by the ~~d~~Department of ~~j~~Justice, Motor Vehicle Division. The permit is valid for ~~six months~~ one year from the date of successful completion of the written exam; and
(iv) remains the same.

AUTH: 20-7-502, MCA
IMP: 20-7-502, MCA

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: Beverly Marlow, P.O. Box 202501, Helena, Montana, 59620-2501; telephone (406) 444-3172; fax (406) 444-2893; or e-mail bemarlow@mt.gov, and must be received no later than 5:00 p.m., December 23, 2011.

7. Ann Gilkey, Chief Legal Counsel for the Office of Public Instruction has been designated to preside over and conduct this hearing.

8. The Superintendent of Public Instruction 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 Superintendent.

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 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.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by e-mail and telephone on December 21, 2009.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State November 14, 2011.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 10.55.909 relating to student) PROPOSED AMENDMENT
records)

TO: All Concerned Persons

1. On December 16, 2011, at 9:00 a.m. the Board of Public Education will hold a public hearing in the Superintendent's Conference Room at 1227 11th Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board of Public Education 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 board no later than 5:00 p.m. on December 12, 2011, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

10.55.909 STUDENT RECORDS (1) through (1)(e) remain the same.

(f) immunization records as per 20-5-406, MCA; ~~and~~

(g) attendance data; and

(h) the statewide student identifier assigned by the Office of Public

Instruction.

(2) and (3) remain the same.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

4. REASON: The Board of Public Education has determined that it is reasonable and necessary to amend ARM 10.55.909, Student Records. The amendment adds a requirement that a student's permanent record include the statewide student identifier assigned by the Office of Public Instruction. The addition of the statewide student identifier will assist with the transfer of student information as students move among schools and school districts in Montana and from K-12 to postsecondary enrollment. The campuses of the Montana University System are set up to receive and store the statewide student identifier from K-12 student transcripts.

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: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov and must be received no later than 5:00 p.m., December 23, 2011.

6. Peter Donovan, Executive Secretary for the Board of Public Education has been designated to preside over and conduct this hearing.

7. The Board of Public Education 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 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, do not apply.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Patty Myers
Patty Myers, Chair
Board of Public Education

Certified to the Secretary of State November 14, 2011.

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 12.6.1401 and 12.6.1409,	)	AMENDMENT, ADOPTION, AND
adoption of NEW RULE I, and repeal of	)	REPEAL
ARM 12.6.1402, 12.6.1403, 12.6.1404,)	
12.6.1405, 12.6.1406, 12.6.1407,	)	NO PUBLIC HEARING
12.6.1408, 12.6.1410, and 12.6.1411	)	CONTEMPLATED
regarding raptor propagation)	

TO: All Concerned Persons

1. On March 8, 2012, the Fish, Wildlife and Parks Commission (commission) proposes to amend, adopt, and repeal the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than December 9, 2011, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail cfurthmyre@mt.gov.

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

12.6.1401 APPLICATION FOR PERMIT (1) Persons must possess both a federal and a Montana raptor propagation permit in order to:

(a) possess, transport, import, purchase, barter, or capture from the wild, any raptor for propagation purposes; and

(b) offer to sell, purchase, or barter a raptor egg or semen for propagation purposes.

(4) (2) Persons wishing to apply for a captive-breeding Montana raptor propagation permit shall file a written application on a form provided by the department, a copy of a current federal captive-breeding raptor propagation permit, and \$20100.

(3) Montana raptor propagation permits are valid for a period of five years or portion thereof, and shall expire on the date designated on the face of the permit unless amended or revoked. Permits are renewable.

AUTH: 87-5-210, MCA
IMP: 87-5-210, MCA

12.6.1409 RECORDS AND REPORT (1) The records required by federal regulations 21.30(d)(10) shall be sufficient record for the state.

(2) The permittee shall file with the department a copy of the annual report ~~described in section 21.30(d)(11) of the~~ required by federal regulations by no later than January 31 of each year.

AUTH: 87-5-210, MCA

IMP: 87-5-210, MCA

4. The new rule proposed to be adopted provides as follows:

NEW RULE I FEDERAL RAPTOR PROPAGATION REGULATIONS

(1) The commission adopts and incorporates by reference federal regulation contained in 50 C.F.R. § 21.30. A copy of the federal raptor propagation regulations may be obtained from the Department of Fish, Wildlife and Parks, Enforcement Bureau, 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana, 59620-0701.

AUTH: 87-5-210, MCA

IMP: 87-5-210, MCA

5. The commission proposes to repeal the following rules:

12.6.1402 FACILITIES

AUTH: 87-5-210, MCA

IMP: 87-5-210, MCA

12.6.1403 NOTIFICATION OF LAYING OF EGGS

AUTH: 87-5-210, MCA

IMP: 87-5-210, MCA

12.6.1404 MARKING

AUTH: 87-5-210, MCA

IMP: 87-5-210, MCA

12.6.1405 TAKING RAPTORS OR RAPTOR EGGS FROM THE WILD

AUTH: 87-5-210, MCA

IMP: 87-5-210, MCA

12.6.1406 TRANSFER, PURCHASE, SALE, OR BARTER OF RAPTORS, RAPTOR EGGS, RAPTOR SEMEN, OR RAPTOR PROGENY

AUTH: 87-5-210, MCA

IMP: 87-5-210, MCA

12.6.1407 POSSESSION OF EGGS, NESTS, OR FEATHERS

AUTH: 87-5-210, MCA
IMP: 87-5-210, MCA

12.6.1408 INTENTIONAL RELEASE TO THE WILD

AUTH: 87-5-210, MCA
IMP: 87-5-210, MCA

12.6.1410 INTERSPECIFIC HYBRIDIZATION

AUTH: 87-5-210, MCA
IMP: 87-5-210, MCA

12.6.1411 DEATH, ESCAPE, OR RELEASE

AUTH: 87-5-210, MCA
IMP: 87-5-210, MCA

Reasonable Necessity: The United States Fish and Wildlife Service's revised federal raptor propagation regulations became effective June 22, 2011. The commission is proposing amending ARM 12.6.1401 to be consistent with the federal permit period of five years allowing for one expiration date for both permits. The commission is also proposing a \$100 fee for a five year permit instead of a \$20 fee for an annual permit.

The commission's proposed amendments to ARM 12.6.1409 remove the specific citation to federal regulations and require a copy of the report submitted to the federal government be submitted to the Department of Fish, Wildlife and Parks by no later than January 31 for the ease of reporting requirements of raptor propagators.

The commission is proposing adopting by reference the federal raptor propagation rules and repealing ARM 12.6.1402 through 12.6.1408 and 12.6.1410 through 12.6.1411 for consistency.

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 Bette Moe, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59620-0701; fax 406-444-2452; e-mail bmoe@mt.gov, and must be received no later than December 30, 2011.

7. If persons who are directly affected by the proposed actions 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 Coleen Furthmyer at the above address no later than 5:00 p.m., December 30, 2011.

8. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 12 persons based on the number of falconers and propagators.

9. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

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

/s/ Bob Ream

Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ John F. Lynch

John F. Lynch
Rule Reviewer

Certified to the Secretary of State November 14, 2011

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 12.6.1112 and 12.6.1123 and) AMENDMENT AND ADOPTION
adoption of NEW RULE I regarding)
falconry) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On March 8, 2012, the Fish, Wildlife and Parks Commission (commission) proposes to amend and adopt the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than December 9, 2011, to advise us of the nature of the accommodation that you need. Please contact Coleen Furthmyre, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail cfurthmyre@mt.gov.

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

12.6.1112 TAKING, POSSESSING, AND TRANSPORTING RAPTORS FOR FALCONRY (1) remains the same.

(2) A resident falconer may take ~~No more than two raptors may be taken~~ from the wild each calendar year to use in falconry. Nonresident falconers must possess a valid state permit for take of raptors from the wild.

(a) Take of peregrine falcons from the wild is limited to time periods specified by ~~commission~~ annual rules. Take is limited to permittees who have received a peregrine take permit from the department and the conditions associated with that permit.

(b) through (7)(b) remain the same.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-206, 87-5-208, MCA

12.6.1123 REPORTING (1) No permittee may take, purchase, receive, or otherwise acquire, sell, barter, transfer, or otherwise dispose of any raptor unless the permittee submits a federal form 3-186A (Migratory Bird Acquisition/Disposition Report) or similar state form, completed in accordance with the instructions on the form, ~~to the service and~~ to the department within ~~five ten~~ ten calendar days of any transaction.

(2) remains the same.

AUTH: 87-5-204, MCA

IMP: 87-5-204, 87-5-208, MCA

4. The new rule proposed to be adopted provides as follows:

NEW RULE I APPLICATION AND PERMITTING FOR NONRESIDENT RAPTOR TAKE (1) Three take permits for each species of raptor allowed to be removed from the wild will be available to nonresidents through a drawing.

(2) Nonresidents may only possess one take permit.

(3) Nonresidents applying for a take permit must submit to the department by March 15:

(a) a completed application;

(b) a \$5 application fee; and

(c) a copy of their valid federal or state falconry license.

(4) Upon notification, successful applicants may purchase a nonresident take permit for \$200. The permit must be purchased by May 1 or will be made available to other applicants.

(5) Permits are valid from June 1 through March 31 and only for the species specified on the permit.

(6) Nonresidents must comply with the reporting requirements of ARM 12.6.1123.

AUTH: 87-5-204, MCA

IMP: 87-5-204, 87-5-208, MCA

Reasonable Necessity: In 2011 the Legislature passed and the Governor signed SB 92 allowing nonresidents to capture raptors from the wild. The commission is proposing amendments to ARM 12.6.1112 and adoption of NEW RULE I to provide a structure for the nonresident take including application requirements, fees, quota, and reporting requirements. The commission is also proposing amending the five-day reporting requirement in ARM 12.6.1123 to ten days to be consistent with the federal reporting requirements.

5. 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 Bette Moe, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59620-0701; fax 406-444-2452; e-mail bmoe@mt.gov, and must be received no later than December 30, 2011.

6. If persons who are directly affected by the proposed actions 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 Coleen Furthmyer at the above address no later than 5:00 p.m., December 30, 2011.

7. If the agency receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly

affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 12 persons based on the number of falconers and propagators.

8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the commission or department.

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

/s/ Bob Ream
Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ John F. Lynch
John F. Lynch
Rule Reviewer

Certified to the Secretary of State November 14, 2011

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I and amendment of ARM	)	ADOPTION AND AMENDMENT
18.6.202, 18.6.203, 18.6.204,)	
18.6.205, 18.6.211, 18.6.213,	)	NO PUBLIC HEARING
18.6.215, 18.6.221, 18.6.231,	)	CONTEMPLATED
18.6.240, 18.6.241, 18.6.244,)	
18.6.245, 18.6.246, 18.6.247,)	
18.6.251, and 18.6.262 pertaining to)	
Outdoor Advertising)	

TO: All Concerned Persons

1. On December 26, 2011, the Department of Transportation proposes to adopt and amend the above-stated rules.

2. The Department of Transportation 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 Transportation no later than 5:00 p.m. on December 16, 2011, to advise us of the nature of the accommodation that you need. Please contact Patrick Hurley, Department of Transportation, 2701 Prospect Avenue, Helena, Montana, 59601; telephone (406) 444-6068; fax (406) 444-7254; TTY/Telecommunications Device for the Deaf 800-335-7592 or (406) 444-7696; or e-mail phurley@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I UNZONED INDUSTRIAL ACTIVITY (1) The following criteria shall be used to determine whether an activity qualifies an area to be considered unzoned industrial:

(a) the industrial permanent buildings, improvements, or industrial activities area used to qualify an area must be located within 660 feet of the right-of-way of an interstate or primary highway;

(b) an industrial business may not be located inside a structure which is used for a residence, or in a building intended for use by the resident such as a garage or other outbuilding. If a residence exists on the location, the location shall not qualify for use as an industrial activities area;

(c) any business conducting industrial activities shall have been in business at least one year prior to being considered as qualifying the area as an unzoned industrial area;

(d) signs, displays, or other devices identifying any industrial business may be considered in the determination of visibility;

(e) seasonal (but not temporary or transient) industrial activities may be considered as a qualifying activity at the discretion of the department;

(f) an industrial activities area may include readily identifiable areas for which the primary uses are the manufacturing, servicing, or storage of goods;

(g) an industrial activity shall hold a current, valid business license issued by a local, county, or state government which authorizes the industrial activity to operate from that location;

(h) any industrial building shall have a permanent foundation, built or modified for its current industrial use. Where a trailer, mobile home, manufactured home, or similar structure is used as an industrial business office, all wheels, axles, and springs shall be removed. The mobile structure shall be permanently secured on piers, pad, or foundation;

(i) a self-propelled vehicle shall not qualify for use as an industrial business or office for the purpose of these rules.

(2) A maximum of two signs shall be permitted from a qualifying industrial activity. The sign(s) shall be located on the same side of the controlled highway as the qualifying activity, unless the property is separated from the controlled highway by a frontage, access, or other type of road parallel to the controlled highway. If the property is located adjacent to a parallel road, the sign(s) shall be located on the same side of the parallel road as the qualifying activity, and shall not be located between the parallel road and the controlled highway.

(3) Unzoned industrial areas are not created when:

(a) an industrial activity is located either partially or totally within an area which has been zoned by a bona fide state, county, or local zoning authority;

(b) an industrial activity is engaged in or established primarily for the purpose of qualifying an area for the displaying of outdoor advertising; or

(c) spot-zoning or strip-zoning of an area for the display of outdoor advertising has occurred.

(4) If the qualifying industrial activity at the sign location ceases for a period of nine months, the sign will be deemed nonconforming, and must adhere to all outdoor advertising statutes and rules on repair or replacement of nonconforming signs. If a qualifying industrial activity again becomes operational at the sign location, the sign will revert to its former conforming status for the duration of the industrial activity and nine months thereafter.

(5) The department shall be the sole determinant as to whether an area qualifies as an unzoned industrial activity.

AUTH: 75-15-121, MCA

IMP: 75-15-103, 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to separate "commercial" and "industrial" activities criteria, as the current combined rule created confusion for potential outdoor advertising permit applicants. The criteria for "industrial" activities will now be found in New Rule I, while the criteria for "commercial activities" will continue to be found in ARM 18.6.203 with the proposed amendments for clarification.

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

18.6.202 DEFINITIONS (1) remains the same.

(2) "Advertising device" means any outdoor sign, display, device, figure painting, drawing, message, placard, poster, billboard, structure, or any other contrivance designed, intended, or used to advertise or to give information in the nature of advertising and having the capacity of being visible from any place on the main traveled way of any interstate, national highway system, or federal-aid primary highway system. This includes any device located outside or on the outside of any building which identifies or advertises any business, enterprise, organization or project, product, or service, including all parts such as frames and supporting structures located on any premises by means of painting on or attached bills, letters, numerals, pictorial matter, or electric or other devices including any airborne device tethered to any building, structure, vehicle, or other anchor and an announcement, notice, directional matter, name, declaration, demonstration, display, mural, or insignia, whether permanent, temporary, or portable installation. The term includes the sign face(s) and the sign structure. Monuments, gravestones, Gravestones and dedication markers erected by governmental entities or nonprofit entities as tributes or memorials are not considered advertising devices. Advertising device is synonymous with sign.

(3) "Agricultural Activity" means any activity on improved or unimproved land directly related to the production of crops, dairy products, poultry, or livestock; any activity directly related to the cultivation or harvesting of trees; or any activity directly related to fish farms.

(3) through (6) remain the same but are renumbered (4) through (7).

~~(7) "Commercial or industrial activity" is defined at 75-15-103, MCA, and has the additional meaning of an activity which is permitted only in a commercial or industrial zone or a less restrictive zone by the nearest zoning authority within the state, except that none of the following is a commercial or industrial activity:~~

~~(a) any erection or maintenance of an outdoor advertising structure;~~
~~(b) any agricultural, forestry, ranching, grazing, farming or related activity, or operation of a wayside stand for the sale of fresh fruit, their products or produce;~~
~~(c) any activity normally and regularly in operation less than three months of the year;~~

~~(d) any transient or temporary activity;~~

~~(e) any activity not visible from the traffic lanes of the main traveled way;~~

~~(f) any activity more than 660 feet from the nearest edge of the right-of-way;~~

~~(g) any activity conducted in a building principally used as a residence;~~

~~(h) any operation of railroad tracks, a minor siding or a passenger depot;~~

~~(i) any activity that has been in business less than one year.~~

(8) "Commercial activity" is defined at 75-15-103, MCA, and has the additional meaning of income-producing property such as, but not limited to, office buildings, retail buildings, hotels, banks, restaurants, service outlets, and owner-occupied properties being put to income-producing uses. The term does not include any activity that has been in business less than one year, or any property on which the only commercial activity is the erection or maintenance of an outdoor advertising structure.

(8) through (19) remain the same but are renumbered (9) through (20).

(21) "Height above ground level (HAGL)" means the distance in feet from the

ground level to the lowest edge of the bottom molding of the sign display face (panel).

(20) and (21) remain the same but are renumbered (22) and (23).

(24) "Industrial Activity" is defined at 75-15-103, MCA, and has the additional meaning of land or improvements that an industrial business is currently using or can be adopted by the business for future industrial use; a combination of land, improvements, and machinery integrated into a functioning unit to assemble, process, and manufacture products from raw materials or fabricated parts; factories that render service, including but not limited to laundries, dry cleaners, storage warehouses, refineries; or areas on which an industrial business produces natural resources. The term does not include any activity that has been in business less than one year, or any property on which the only industrial activity is the erection or maintenance of an outdoor advertising structure.

(22) through (25) remain the same but are renumbered (25) through (28).

(29) "Multi-face sign" means a sign having more than one face (e.g., doubles, v-type, back-to-back, side-by-side and stacked).

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

(38) "Political sign" means a sign which announces, promotes, or advertises the name, program, or political party of any candidate for public office, or an opinion regarding a political issue associated with a candidate or election.

(34) through (38) remain the same but are renumbered (39) through (43).

(44) "Temporary sign" means a sign intended to be displayed for a limited period of time only in conformity with ARM 18.6.240.

(39) through (41) remain the same but are renumbered (45) through (47).

AUTH: 75-15-121, MCA

IMP: 75-15-103, 75-15-111, 75-15-112, 75-15-113, 75-15-121, MCA

REASON: The proposed amendments are necessary to add definitions of "agricultural activity," "commercial activity," "height above ground level," "industrial activity," "multi-face sign," "political sign," and "temporary sign," as these definitions are used elsewhere in the Outdoor Advertising Control rules, and the terms must be defined for their use. The proposed amendments will also delete the definition of "commercial and industrial activities," as these definitions have been split into two separate definitions for consistency with further proposed rule amendments which will split the rules using these terms. The proposed amendments will also add clarification language to the definition of "advertising device."

18.6.203 UNZONED COMMERCIAL OR INDUSTRIAL ACTIVITY (1) The following criteria shall be used to determine whether an activity qualifies an area to be considered unzoned commercial ~~or industrial~~:

(a) the commercial ~~or industrial~~ permanent buildings, ~~or improvements, or industrial activities area~~ comprising a business used to qualify an area must be located within 660 feet of the right-of-way of an interstate or primary highway;

(b) a commercial ~~or industrial~~ business may not be located inside a structure which is also used as a residence, nor in a building intended for use by the resident such as a garage or other outbuilding. If a residence exists on the location, the

business must be located in a separate building from the residence, and must meet all requirements in this rule for utilities, parking, etc.;

(c) commercial ~~and industrial~~ activities shall have been in business at least one year prior to being considered as qualifying the area as an unzoned commercial ~~or industrial~~ area;

(d) and (e) remain the same.

(f) signs, displays, or other devices identifying the commercial ~~or industrial~~ business may be considered in the determination of visibility;

(g) seasonal (but not temporary or transient) commercial ~~or industrial~~ activities may be considered as a qualifying activity at the discretion of the department;

~~(h) readily identifiable areas used for industrial activities exist in which the primary uses are the manufacturing, servicing, or storage of goods;~~

(i) and (j) remain the same but are renumbered (h) and (i).

~~(k)(j)~~ a commercial ~~or industrial~~ business shall hold a current, valid business license issued by a local, county, or state government which authorizes the business to operate from that location;

~~(l)(k)~~ any commercial ~~or industrial~~ building shall have a permanent foundation, built or modified for its current commercial ~~or industrial~~ use. Where a mobile home is used as a business office, all wheels and axles and springs shall be removed. The vehicle shall be permanently secured on piers, pad, or foundation;

~~(m)(l)~~ a self-propelled vehicle shall not qualify for use as a commercial ~~or industrial~~ business or office for the purpose of these rules.

(2) remains the same.

(3) Unzoned commercial ~~or industrial~~ areas are not created when:

(a) ~~an industrial or a~~ commercial activity is located either partially or totally within an area which has been zoned by a bona fide state, county, or local zoning authority;

(b) a commercial ~~or industrial~~ activity is engaged in or established primarily for the purpose of qualifying an area for the displaying of outdoor advertising;

(c) and (d) remain the same.

(4) If the qualifying commercial ~~or industrial~~ business at the sign location ceases for a period of nine months, the sign will be deemed nonconforming, and must adhere to all outdoor advertising statutes and rules on repair or replacement of nonconforming signs. If a qualifying commercial ~~or industrial~~ business again becomes operational at the sign location, the sign will revert to its former conforming status for the duration of the business operation and nine months thereafter.

AUTH: 75-15-121, MCA

IMP: 75-15-103, 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to separate "commercial" and "industrial" activities criteria, as the current combined rule created confusion for potential outdoor advertising permit applicants. The criteria for "industrial" activities will now be found in New Rule I, while the criteria for "commercial activities" will continue to be found in ARM 18.6.203, with the proposed amendments for clarification.

18.6.204 ON-PREMISE SIGNS - QUALIFYING LOCATIONS (1) remains the same.

(2) The sign must be located on the same premises as the activity or property advertised; ~~however, physical evidence rather than property lines determine whether the premises on which an activity is conducted qualifies to allow an on-premise sign.~~

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

~~(d) any land which is located more than one quarter mile from the principal activity or in closer proximity to the highway than the principal activity;~~

(e) and (f) remain the same but are renumbered (d) and (e).

AUTH: 75-15-121, MCA

IMP: 75-15-111, MCA

REASON: The proposed amendment to (2) is necessary to delete language which is not sufficiently clear to provide guidance for persons seeking to erect on-premise signs, as to how the property boundary is used in evaluating the site. The proposed amendment to (6)(d) is necessary because any business located on the sign owner's property which meets all requirements for an on-premise sign will qualify under the statutes and rules, and distances should not be used as a measurement for compliance.

18.6.205 OFF-PREMISE SIGNS - LOCATIONS - COMPLIANCE WITH STATUTES, RULES, ORDINANCES (1) and (2) remain the same.

(3) Off-premise signs may be located in unzoned commercial or industrial areas, which area contains a qualifying commercial or industrial activity, as determined by the department in accordance with the Outdoor Advertising Act and ARM 18.6.203 and [New Rule I].

~~(4) Off-premise signs may be located in areas in which both the future land use map and the current land development regulations designate the property for commercial or industrial development. In areas in which the future land use map and land development regulations do not specifically designate the parcel as commercial or industrial, but allow for multiple uses on the parcel including commercial or industrial, the department shall employ a use test to determine the appropriateness of the location for an off-premise sign permit as follows:~~

~~(a) the proposed sign location shall exhibit one conforming business;~~

~~(b) the businesses shall be on the same side of the controlled route as the proposed sign location; and~~

~~(c) the proposed sign location shall be within 600 feet of at least one of the businesses.~~

(5) through (8) remain the same but are renumbered (4) through (7).

AUTH: 75-15-121, MCA

IMP: 75-15-111, MCA

REASON: The proposed amendment is necessary to delete (4) because the

subsection contains criteria which are not appropriate for location of off-premise signs. Potential sign applicants may be confused by the current language on "future land use map" and "land development regulations," when the subsection does not specifically refer to local city or county zoning regulations. Section 75-15-111, MCA, specifically allows outdoor advertising signs only in areas zoned industrial or commercial by the local zoning authority, or in areas not zoned, but containing qualifying commercial or industrial activities. The subsection proposed for deletion therefore did not meet the statute's criteria for allowable locations for outdoor advertising signs.

18.6.211 PERMITS (1) through (8) remain the same.

(9) Ownership of a sign permit may not be transferred without the express written consent of the permit holder(s) on a form provided by the department. The current permit holder(s) must sign the form transferring the permit. Only off-premise commercial advertising sign permits may be transferred. Temporary, church and service club, directional, cultural, noncommercial, political, and official signs shall not be transferred, but may be terminated by permit holder request or department action.

(10) and (11) remain the same.

AUTH: 75-15-121, ~~75-15-122~~ MCA

IMP: 75-15-122, MCA

REASON: The proposed amendment is necessary to allow outdoor advertising permit transfers within the off-premise commercial sign category only. This amendment is necessary because other categories of signs, such as church signs, service club signs, cultural signs, etc., are specific to one owner, organization, or attraction only and will not therefore contain correct information for any subsequent permit holder. Additionally, none of the listed sign categories are charged permit renewal fees, so a transfer from one of these categories to a commercial off-premise category would not be appropriate, as the commercial advertising signs are charged permit renewal fees. Any new owner or entity seeking an outdoor advertising permit in these categories must apply for a new outdoor advertising permit and submit to a site inspection for compliance with all outdoor advertising statutes and rules. The proposed amendment will also delete an incorrect reference to an authorizing statute which does not refer to the department's rulemaking authority.

18.6.213 PERMIT ATTACHMENT (1) remains the same.

(2) The permit plate must be attached immediately upon erection of the sign.

(2) through (5) remain the same, but are renumbered (3) through (6).

AUTH: 75-15-121, MCA

IMP: 75-15-122, MCA

REASON: The proposed amendment is necessary to add language on the necessity for immediate attachment of the permit plate upon erection of the sign. The rule does not currently contain any time limitation on permit plate attachment,

thus the department is clarifying the immediate need for attachment.

18.6.215 FEES (1) through (2)(b)(iii) remain the same.

(iv) multiple face signs (aggregate of faces totals under 672 sq. ft.) \$ ~~450.00~~
125.00

(v) multiple face signs (aggregate of faces totals over 673 sq. ft.) \$ 150.00

(c) through (iii) remain the same.

(iv) multiple face signs (aggregate of faces totals under 672 sq. ft.) \$ ~~225.00~~
200.00

(v) multiple face signs (aggregate of faces totals over 673 sq. ft.) \$ 225.00

(d) remains the same.

AUTH: 75-15-121, MCA

IMP: 75-15-122, MCA

REASON: The proposed amendments are necessary because the existing fee schedule does not recognize the multi-face signs have different total square footage than non-multi-face signs. Some owners of multi-face signs may therefore be overcharged permit renewal fees for signs which should be considered as one sign structure only under the definition of multi-face signs. The amendments will clarify that smaller multi-face signs shall be charged a lower rate than larger multi-face signs. The amendment will result in an estimated cumulative permit renewal fee decrease of \$ 17,400.00, and will affect an estimated 348 outdoor advertising multi-face sign permit holders in Montana.

18.6.221 NEW SIGN ERECTION - CONSTRUCTION STANDARDS

(1) Within ~~six months~~ 90 days of the date of issuance of the permit, which is the date the application was approved, the sign owner will:

(a) through (4) remain the same.

~~(5) Sign structures shall be designed and constructed to withstand wind loads of 80 miles per hour or greater.~~

AUTH: 75-15-121, MCA

IMP: 75-15-113, 75-15-122, MCA

REASON: The proposed amendment will decrease sign erection dates from six months to 90 days, to better reflect MDT's time frame for new sign erection. The proposed amendment will also delete the requirement that sign structures be able to withstand wind loads of 80 miles per hour. The department is not able to evaluate or measure construction standards to ensure this requirement is met. The requirement is therefore not enforceable by the department and should be deleted.

18.6.231 OFF-PREMISE SIGN STANDARDS (1) through (2)(c) remain the same.

(d) signs, whether or not visible to the main traveled way of a controlled route, must not be located within 500 feet of any of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or

merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in cities or towns;

(e) through (g) remain the same.

(h) ~~multi-faced, back-to-back, and v-type signs shall be considered as a single sign or structure. Multi-faced signs may be positioned side-by-side on a single structure or stacked vertically on a single structure, and are to be considered as one sign for spacing and permitting purposes;~~

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

(c) signs must not exceed 30 feet in height, as measured from a right angle from the surface of the roadway at the centerline of the controlled route, or from a point on the sign structure which is at the same elevation as the crown of the roadway to the top of the highest sign face.;

(d) signs within 500 feet of any intersection, intersecting roadway, junction, property driveways, approaching or merging traffic must be erected with the height above ground level (HAGL) of not less than 8 feet.

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

(f) signs that include directions or directional elements (e.g., an arrow indicating a turn) in locations which are so close to a turning point there is insufficient time to signal and turn safely;

~~(f)(g) signs which prevent the driver of a vehicle from having a clear and unobstructed view of at-grade intersections, junctions, property driveways, approaching or merging traffic, official traffic control signs, or other traffic control devices;~~

(g) through (o) remain the same but are renumbered (h) through (p).

AUTH: 75-15-121, MCA

IMP: 75-15-113, 75-15-121, MCA

REASON: The proposed amendment to (2)(d) is necessary to insert additional wording on types of intersecting roads or driveways which prohibit sign placement in close proximity to intersections for safety reasons. The same prohibition exists on all other types of outdoor advertising signs so that drivers may have unobstructed views at all intersections to allow for safe driving. The proposed amendment to (2)(h) is necessary to clarify the language on multi-face signs, for which a definition is now proposed in ARM 18.6.202, and to eliminate redundancy in repeating the information that a multi-face sign is considered a single sign. The proposed amendment to (3)(d) will add a requirement regarding height above ground level to clarify this requirement for permit applicants. The proposed amendment to new (3)(f) is necessary to add an additional prohibition on off-premise sign standards for safety reasons. The proposed amendment will prohibit signs containing directional elements which may distract drivers at critical decision points and thereby cause unsafe driving. The proposed amendment to (4)(g) will add language on intersecting junctions and property driveways which must also retain an unobstructed view for drivers in addition to the intersections and signals already listed, for safety reasons.

18.6.240 TEMPORARY SIGNS (1) through (1)(f) remain the same.

(g) be erected or maintained outside the time limits set forth in this rule for each category of temporary signs;

(h) be erected within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in cities or towns;

(i) be erected on interstate highways.

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

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed amendments are necessary to prohibit temporary signs within 500 feet of an intersection in rural areas or 140 feet of an intersection in cities or towns for safety reasons. The same prohibition exists on all other types of outdoor advertising signs so that drivers may have unobstructed views at all intersections to allow for safe driving.

18.6.241 CHURCH AND SERVICE CLUB SIGNS (1) through (1)(d) remain the same.

(e) Signs visible from controlled routes must not be located within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in cities or towns;

(f) through (2) remain the same.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, 75-15-121, MCA

REASON: The proposed amendment is necessary to insert additional wording on types of intersecting roads or driveways which prohibit sign placement in close proximity to intersections for safety reasons. The same prohibition exists on all other types of outdoor advertising signs so that drivers may have unobstructed views at all intersections to allow for safe driving.

18.6.244 CULTURAL SIGNS (1) through (3)(a) remain the same.

(b) cultural signs visible from controlled routes must not be located within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic in cities or towns;

(c) through (7) remain the same.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to insert additional wording on types of intersecting roads or driveways which prohibit sign placement in close proximity to intersections for safety reasons. The same prohibition exists on all other types of outdoor advertising signs so that drivers may have unobstructed views at all intersections to allow for safe driving.

18.6.245 NONCOMMERCIAL SIGNS (1) through (5)(d) remain the same.

(e) be located within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in cities or towns;

(f) through (9) remain the same.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to insert additional wording on types of intersecting roads or driveways which prohibit sign placement in close proximity to intersections for safety reasons. The same prohibition exists on all other types of outdoor advertising signs so that drivers may have unobstructed views at all intersections to allow for safe driving.

18.6.246 POLITICAL SIGNS (1) remains the same.

(2) Political signs shall not:

(a) be placed on or allow any portion to intrude in the public right-of-way or on public property;

(b) and (c) remain the same.

(d) be located placed within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadways with approaching or merging traffic at grade along a primary highway, or within 500 feet of an interchange or rest area on the interstate highway system as measured from the beginning of the pavement widening for the interchange;

~~(e) be erected or maintained prior to 90 days before the applicable election.~~

(e) attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate, or resemble any official traffic sign, signal, or device;

(f) prevent the driver of a vehicle from having a clear and unobstructed view of at-grade intersections, approaches, official traffic control signs, other traffic control devices, or merging traffic;

(g) be placed within 100 feet of any entrance to the building in which a polling place is located;

(h) use lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled way of the highway, or is of such low intensity or brilliance as to not cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.

(3) Political signs must be removed within ~~30~~ 14 days following the applicable election. The department shall notify the landowner of illegal signs which are not removed within ~~30~~ 14 days. The signs shall be removed by the department 24 hours after notification to the landowner. The department shall retain removed political signs for five working days after notification of removal before their destruction. The sign owner may retrieve the signs during this period.

(4) Signs that pose a traffic hazard may be removed by the department without prior notification to the sign owner.

(5) It is the responsibility of the candidate or political committee to ensure all signs are in compliance with this rule.

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

AUTH: 75-15-121, MCA

IMP: 75-15-111, MCA

REASON: The proposed amendments are necessary to impose additional restrictions on placement of political signs in proximity to intersections, placement outside polling places, and safe lighting. These requirements make political sign restrictions consistent with other outdoor advertising signs for safety reasons. The proposed amendments will also add language on removal of signs which pose a traffic hazard, and on candidate and political committee responsibility for rule compliance. Finally, the amendments will delete the language restricting political signs to 90 days prior to an election in keeping with court decisions from around the country on limitations on free speech rights.

18.6.247 OFFICIAL SIGNS (1) through (9) remain the same.

(10) Official signs visible from controlled routes must not be located within 500 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in rural areas, or within 140 feet of an intersection, intersecting roadway, junction, property driveway, or connecting roadway with approaching or merging traffic in cities or towns.

(11) through (14) remain the same.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, MCA

REASON: The proposed amendment is necessary to insert additional wording on types of intersecting roads or driveways which prohibit sign placement in close proximity to intersections for safety reasons. The same prohibition exists on all other types of outdoor advertising signs so that drivers may have unobstructed views at all intersections to allow for safe driving.

18.6.251 REPAIR OF NONCONFORMING SIGNS (1) through (5) remain the same.

(6) Nonconforming signs which are destroyed, abandoned, or discontinued may not be re-erected except in instances of vandalism or other criminal or tortious acts. The work must be accomplished within ~~six months~~ 90 days or the permit may

be revoked. An extension of time to accomplish the work may be granted at the sole discretion of the department upon written request from the sign owner stating the reason(s) for the request.

(7) remains the same.

(8) The department shall notify a sign owner of a violation of this rule. The department may allow a permittee who has increased the dimensions or has lighted a previously unlighted nonconforming sign ~~60~~ 90 days to restore the sign as originally permitted. If the dimensions are increased or the sign is lighted a second time, the permit will be revoked by the department.

(9) and (10) remain the same.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-121, MCA

REASON: The proposed amendments are necessary to add language on grant of an extension of time if circumstances warrant. The proposed amendments will also make language on 90-day time periods consistent throughout the rule.

18.6.262 SIGN STRUCTURES THAT ARE BLANK, ABANDONED, DILAPIDATED, DISCONTINUED, OR IN DISREPAIR (1) When the department determines a sign structure has been blank, abandoned, dilapidated, discontinued, or in disrepair ~~for a period of 60 days~~, the department shall notify the sign owner of the violation and require remedial action within ~~six months~~ 90 days. If such action is not taken, the permit will be revoked and action for the removal of the sign will be taken as provided in 75-15-131, MCA. An extension of time to accomplish the work may be granted at the sole discretion of the department upon written request from the sign owner stating the reason(s) for the request.

(2) remains the same.

AUTH: 75-15-121, MCA

IMP: 75-15-111, 75-15-113, 75-15-121, 75-15-131, MCA

REASON: The proposed amendments are necessary to add language on grant of an extension of time if circumstances warrant. The proposed amendments will also make language on 90-day time periods consistent throughout the rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Patrick Hurley, Department of Transportation, 2701 Prospect Avenue, Helena, Montana, 59601; telephone (406) 444-6068; fax (406) 444-7254; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., December 23, 2011.

6. If persons who are directly affected by the proposed actions 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 Patrick Hurley at the above address no later than 5:00 p.m., December 23, 2011.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 191 persons based on 1907 permit holders.

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 5 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, do not apply.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Timothy W. Reardon
Timothy W. Reardon
Director
Transportation

Certified to the Secretary of State November 14, 2011.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.17.127 related to prevailing	)	PROPOSED AMENDMENT
wage rates for public works projects -)	
building construction services, heavy)	
construction services, highway)	
construction services, and)	
nonconstruction services)	

TO: All Concerned Persons

1. On December 16, 2011, at 10:30 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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, contact the department no later than 5:00 p.m., on December 12, 2011, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1502; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail mikesmith@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) through (1)(d) remain the same.

(e) The current building construction services rates are contained in the ~~2011~~ 2012 version of "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2011~~ 2012 version of "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2011, Revised June 24, 2011,~~ 2012 version of "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2011~~ 2012 version of "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA

IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to amend ARM 24.17.127 to update the various prevailing wage rates. Annual updates are required by 18-2-413 and 18-2-415, MCA, for building construction services and nonconstruction services, respectively. It is convenient to update the rates for heavy construction services and highway construction services at the same time, as many of the employers affected by the building construction service rates are also affected by the heavy and highway rates. Payment of prevailing wage rates is required in most public works contracts pursuant to 18-2-422, MCA. The department is proposing the rates at this time following completion of its wage surveys, in order to have as current a set of rates as is feasible. The proposed wage rates will apply to public works projects let for bid on or after the effective date of the rate changes.

The department notes that the proposed rates for building construction services and nonconstruction services are based upon survey responses and applicable collective bargaining agreements. The methodology for surveys and rate computations is described in ARM 24.17.121. The department relies upon the information provided by employers and labor organizations during the survey process to set the proposed rates. The final rates are based upon the preliminary rates, as modified by including any relevant information provided during the public comment period.

4. A copy of the proposed 2012 publications, identified as "preliminary building construction rates", "preliminary heavy construction rates", "preliminary highway construction rates", and "preliminary nonconstruction rates", are available and can be accessed on-line via the internet at: www.mtwagehourbopa.com.

5. A printed version of the proposed 2012 publications is also available by contacting Mike Smith at the address, e-mail, or telephone numbers listed in paragraph 2 of this notice.

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: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 1503, Helena, MT 59620-1503; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to mikesmith@mt.gov, and must be received no later than 5:00 p.m., December 23, 2011.

7. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site

accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, 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 or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be 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. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State November 14, 2011

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

In the matter of the repeal of ARM)
24.207.402 adoption of USPAP by)
reference)
NOTICE OF PUBLIC HEARING ON
PROPOSED REPEAL

TO: All Concerned Persons

1. On December 20, 2011, at 11:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed repeal of the above-stated rule.

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 December 15, 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 dlibsrea@mt.gov.

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

24.207.402 ADOPTION OF USPAP BY REFERENCE found at ARM page 24-23522.

AUTH: 37-54-105, MCA
IMP: 37-54-105, 37-54-403, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as unnecessary in light of 34-54-403(2), MCA. The statute provides that if the USPAP standards are modified or supplemented by the Appraisal Standards Board of the Appraisal Foundation, such changes are automatically adopted in Montana. If the board ever questioned whether the modified standards must be observed in this state, the board would hold a public hearing on the matter and thereafter adopt the standards through the standard rulemaking process.

4. 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 dlibsrea@mt.gov, and must be received no later than 5:00 p.m., December 28, 2011.

5. 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.

6. 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 dlibsrea@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

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

BOARD OF REAL ESTATE APPRAISERS
JENNIFER MCGINNIS, 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 November 14, 2011

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

In the matter of the amendment of)
ARM 37.80.101, 37.80.102,)
37.80.205, 37.80.206, 37.80.306,)
37.80.315, and 37.80.502 pertaining)
to child care policy manual revisions)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 15, 2011, at 10:30 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 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 December 7, 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 rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) through (12) remain the same.

(13) The Child Care Assistance Program will be administered in accordance with:

(a) remains the same.

(b) the Montana Child Care Manual in effect on ~~February 1, 2011~~ January 27, 2011. The Montana Child Care Manual, dated ~~February 1, 2011~~ January 27, 2011, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance Program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Abuse/misuse of funds" means administrative violations of departmental, agency, or program regulations, which impair the effective and efficient execution of programs. These violations may result in losses or they may result in denial or reduction in lawfully authorized benefits to participants.

(1) through (9) remain the same but are renumbered (2) through (10).

(11) "Express eligibility" means the procedure used to determine income eligibility for Supplemental Nutrition Assistance Program (SNAP) participants who apply for the Best Beginnings Child Care Scholarship program.

(10) remains the same but is renumbered (12).

(13) "Fraud" means a legal term which encompasses the intentional, wrongful obtaining of either money or some other advantage or benefit from government programs or commercial operations. Fraud includes theft, embezzlement, false statements, illegal commissions, kickbacks, conspiracies, obtaining contracts through collusive arrangements, and similar devices.

(11) through (20) remain the same but are renumbered (14) through (23).

(24) "Special circumstances" means those circumstances that might influence equal access or cultural challenges that, if not granted, would interfere with continuity of care for children.

(21) and (22) remain the same but are renumbered (25) and (26).

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

(1) through (3) remain the same.

(4) Child care providers are entitled to payment only when care is actually provided to the child, with the following three exceptions: except that a household may use the child care subsidy program to pay for days when care is not actually provided to the child in accordance with the requirements for the certified enrollment program as specified in ARM 37.80.206.

~~(a) a licensed or registered child care facility may be paid for care for the holidays of New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, even though the facility is closed for business if:~~

~~(i) the facility charges private pay households for the holiday; and~~

~~(ii) the holiday falls on a day for which the certification plan authorizes care.~~

~~(b) a household may use the child care subsidy program to pay for days when care is not actually provided to the child in accordance with the requirements for the certified enrollment program as specified in ARM 37.80.206;~~

~~(c) a household may use the child care subsidy program to pay for days when care is not actually provided when the child's slot is vacant for a period of not~~

~~more than 30 calendar days and the child's slot will be lost to a child on the provider's waiting list if payment is not made.~~

(5) through (8) remain the same.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

37.80.206 CERTIFIED ENROLLMENT (1) through (2)(b) remain the same.

(c) Certified enrollment may not be used for more than ~~150~~ 70 certified enrollment hours in a state fiscal year per child.

(3) and (4) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, MCA

37.80.306 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) and (2) remain the same.

(3) The applicant and any adult who resides in the applicant's home who might come in contact with children to whom care is provided must provide authorization for criminal, sexual/violent offender registry, and child protective services background checks for the period of time from the present date back to the date of the individual's 18th birthday.

(a) If an individual required to have a background check has lived outside the state of Montana at any time after the individual's 18th birthday and is unable to obtain the necessary out-of-state background checks, the individual must complete a Montana Department of Justice criminal justice information network fingerprint background check and will be required annually thereafter at the applicant's expense.

(4) In addition to completing all required application forms for certification under this chapter, applicants for certification to provide child care as legally certified providers must truthfully attest in writing that he or she:

(a) remains the same.

(b) has not been convicted or adjudicated of a crime involving harm to children, or physical or sexual violence against any person, including misdemeanor or felony convictions;

(c) remains the same.

(d) is not currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care. Mental illness or emotional disturbance which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. Prior to certification, the department may require that an applicant obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness or emotional disturbance exists; ~~or~~

(e) is not chemically dependent upon drugs or alcohol or been convicted or adjudicated of a crime involving drugs or alcohol, including misdemeanor or felony convictions. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or ~~certified chemical dependency counselor~~ licensed addiction

counselor. Prior to certification, the department may require that the provider obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists;

(f) has not been convicted or adjudicated of a crime involving child endangerment, including misdemeanor or felony convictions; or

(g) has not been convicted or adjudicated of a crime involving the unlawful possession of a weapon, including misdemeanor or felony convictions.

~~(5) An applicant proposing to provide care outside the home of the parents must also truthfully attest in writing that, to the best information and belief of the applicant, no member of the applicant's household, and no person coming in contact with children for whom the provider applicant proposes to provide child care under this chapter:~~

~~(a) has been named as the perpetrator in a report substantiating abuse or neglect of a child, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act or had parental rights terminated while an adult;~~

~~(b) has been convicted or adjudicated of a crime involving harm to children, or physical or sexual violence against any person;~~

~~(c) is facing a pending criminal charge involving harm to children, or physical or sexual violence against any person;~~

~~(d) is currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care. Mental illness or emotional disturbance which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. Prior to certification, the department may require that a provider, caregiver or other person obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness or emotional disturbance exists; or~~

~~(e) is chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. Prior to certification, the department may require that the household member or other person in contact with the children obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists.~~

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

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.315 RIGHTS AND RESPONSIBILITIES AGREEMENT (1) In addition to complying with all other certification requirements, providers must sign a rights and responsibilities agreement under this chapter, on the form provided by the department. ~~The provider must return the signed agreement to the child care resource and referral agency.~~ Parents are provided a copy of the providers' rights and responsibilities.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, MCA

37.80.502 CHILD CARE UNDERPAYMENT, OVERPAYMENT, AND OVERCLAIM: CRIMINAL PROSECUTION (1) through (7) remain the same.

(8) Overpayments issued to program types whose business structure is sole proprietorship, partnership, or corporation and the business dissolves or otherwise becomes defunct and the department is unable to collect monies owed, the principals, shareholders, officers, or other individuals involved with the business at the time of dissolution are disqualified from receiving Child Care and Development Fund (CCDF) funds under any other business name or entity.

AUTH: 52-2-704, 53-4-212, MCA

IMP: 52-2-704, 52-2-713, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing amendments to ARM 37.80.101, 37.80.102, 37.80.205, 37.80.206, 37.80.306, 37.80.315, and 37.80.502 pertaining to child care assistance.

ARM 37.80.101

ARM 37.80.101(13)(b) currently adopts and incorporates by reference the Montana Child Care manual effective February 1, 2011. The department proposes to make revisions to this manual that will take effect on January 27, 2012. The proposed amendment to (13) is necessary to incorporate into the Administrative Rules of Montana the revisions to the manual and to permit all interested parties to comment on the department's policies and to offer suggested changes. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.bestbeginnings.mt.gov.

The department does not anticipate any adverse effect or any fiscal impact associated with the changes to the manual and to this rule.

ARM 37.80.102

The department is updating (1) and (12) of this rule to include definitions added to policy as they relate to fraud and abuse/misuse of scholarship funding. Recent Government Accountability Office (GAO) reports have addressed misuse of funding with federal Child Care Block Grant (CCDF) Funds. The CCDF State Plan is requiring rigorous state review and policy implementation related to administrative and intentional program violations and misuse of funding. The following terms have been added to this rule: abuse/misuse of funds, express eligibility, fraud, and special circumstances.

The department does not anticipate any adverse effect or any fiscal impact associated with the changes to the manual and this rule.

ARM 37.80.205

The department is updating (4)(a) and (i & ii) to eliminate payment for holidays which occur during the authorized child care period when the child care facility is closed on the day the holiday is observed. Families may elect to use their certified enrollment hours to make up for this reduction. This reduction is part of the department's cost containment strategy. The department expects this change to affect families and providers because of the reduced benefit. It will have a positive fiscal impact to the department of \$384,312 because of the associated reduction in payments made.

The department is updating (4)(c) by eliminating payment of child care subsidy funds to pay for days when care is not actually provided during times when the child's slot is vacant for a period of not more than 30 calendar days. This provision, known as "hold-the-slot" was typically used for children who spent a portion of their time, such as summer break, with a noncustodial parent. Families may elect to use their certified enrollment hours to make up for this reduction. This reduction is part of the department's cost containment strategy. The department expects this change to affect 46 families and providers because of the reduced benefit. It will have a positive fiscal impact to the department because of the associated reduction in payments made. The amount of this impact is unknown as there is not a data element which tracks this benefit currently operated with policy alone.

ARM 37.80.206

The department is updating (2)(c) to revise the number of certified enrollment hours households may use to pay child care facilities requiring payment when a child is temporarily absent. This reduction is part of the department's cost containment strategy. The department expects this change to affect families and providers because of the reduced benefit. It will have a positive fiscal impact of \$676,860 because of the associated reduction in payments made.

ARM 37.80.306

The department is updating (3) to include the Sexual/Violent Offender Registry as part of the background checks conducted on Legally Certified Providers (LCP). LCPs will receive this scrutiny because there is no additional oversight by the department for this provider type. The department does not anticipate any adverse effect or any fiscal impact associated with this change to this rule.

The department is updating (4)(b) to include additional language to which persons applying to be certified as legally certified providers must truthfully attest in writing, including identification of misdemeanor or felony convictions for crimes involving harm to children and physical or sexual violence against any person.

The department is updating (4)(e) to include additional language to which persons applying to be certified as legally certified providers must truthfully attest in writing including identification of misdemeanor or felony convictions for crimes involving drugs or alcohol regardless of chemical dependency.

The department is updating (4)(f) to include additional language to which persons applying to be certified as legally certified providers must truthfully attest in writing including identification of crimes involving child endangerment.

The department is updating (4)(g) to include additional statements to which persons applying to be certified as legally certified providers must truthfully attest in writing including identification of misdemeanor or felony convictions for crimes involving the unlawful possession of a weapon.

Background checks for the provider types described in (4) above are increasingly revealing that such convictions put the health and safety of young children at risk. The department believes that even misdemeanor charges should preclude these individuals from providing care to children when departmental staff provide no oversight to this provider type. The department does not anticipate any adverse effect for parents and children; however, the department does see potential adverse effect for providers who may not qualify to provide legally certified care. The department does not anticipate any fiscal impact associated with this change to the manual and to this rule.

The department is updating ARM 37.80.306(5)(a) through (e) by deleting the background check information that applies to the provider type "Legally Certified In-Home Provider (LCI)." Any provider coming under this section of ARM: "Legally Certified Provider" must meet the same background check requirements regardless of location of care. Therefore, (a) through (e) are redundant. The department does not anticipate any adverse effect or any fiscal impact associated with the change to this rule.

The department updated (4)(e) by changing the term "certified chemical dependency counselor" to "licensed addiction counselor" in order to use the current designation for this type of counselor in Montana.

ARM 37.80.315

The department is updating (1) to delete language regarding the procedure which providers are required to use in completing the Rights and Responsibility form. Prior to the update, the form was collected and tracked through the centralized CCR&R process and providers failing to complete the form were placed on a "do not pay" list until the form was submitted. This proved to be a cumbersome process and punitive in application. The new language reflects the ability of providers to complete and submit the form on line which streamlines the process.

By the time these rule and policy changes become effective, this form will be completed and submitted on line and will auto populate the department's database, Child Care Under the Big Sky (CCUBS). The department does not anticipate any adverse effect or any fiscal impact associated with the change to this rule.

ARM 37.80.502

The department is adding (8) to include language pertaining to underpayments, overpayments, and over claims. When the structure type of a program, such as corporation, partnership, or sole proprietorship, dissolves, or otherwise becomes defunct, and the department is unable to collect funds owed, individuals involved with those programs as principals, shareholders, officers, or otherwise involved with the business, at the time of dissolution, will be disqualified from receiving CCDF funds under any other business name or entity.

The department does not anticipate any adverse effect or any fiscal impact associated with the change to this rule.

Child Care Manual Changes

Following is a brief overview of the Child Care manual sections with changes related to the above ARM citations.

Section 1-3 Overview – Best Beginnings Child Care Scholarships – Definitions

As is reflected in the change to ARM 37.80.102(1) and (12) for Definitions 1-3, this manual provision is being updated to add four definitions to ARM. The addition of these definitions will clarify the department's use of these terms with families, providers, and Child Care Resource & Referral eligibility staff.

The department does not anticipate any adverse effect or any fiscal impact associated with the changes to the manual.

Section 1-7 Overview – Best Beginnings Child Care Scholarships – Parent Eligibility - Overview

The department is revising this manual section to clarify eligibility requirements for disabled parents requesting child care assistance. Language has been added to require that in a two parent household, if one parent is disabled and unable to work and also unable to provide care for the child, the remaining parent must meet the single parent work requirement. The single parent work requirement reduces the activity hours from 120 hours in a month to 60 hours and thus avoids undue hardship on these families.

The department does not anticipate any adverse effect or any fiscal impact associated with the changes to the manual.

Section 1-8 Overview – Best Beginnings Child Care Scholarships – Child Care Provider Eligibility - Overview

The department is revising this manual section to remove language associated with "Legally Certified In Home Providers" (LCI). Use of in-home providers will become a special designation within the "Legally Certified Provider" (LCP) provider type rather than its own category. This change will enable the department to apply all requirements for the provider type regardless of location of care. In addition, policy requires that registered or certified providers must annually renew their "Rights and Responsibilities" form kept on file at the centralized Child Care Resource and Referral (CCR&R) Agency. Language has been added to clarify that it is the centralized CCR&R that now tracks these documents.

The department does not anticipate any adverse effect or any fiscal impact associated with these changes to the manual.

Section 1-10 Overview – Best Beginnings Child Care Scholarships – Timely Notices and Termination

The department is revising this manual section to replace the term "unregistered" with "certified" with reference to the provider type Legally Certified Provider. This change was missed with the last policy revision.

The department does not anticipate any adverse effect or any fiscal impact associated with this change to the manual.

Section 1-12 Overview – Best Beginnings Child Care Scholarships – Fraud Prevention

This manual section is new and is being put in place in preparation for the administration of the Child Care Development Block Grant (CCDF) Funds. The CCDF State Plan expectations require specific policies designed to reduce the abuse and misuse of such block grant funds. As part of a commitment to the highest possible standards of openness, integrity, and accountability in its administration of the Best Beginnings Child Care Scholarship Program, the Early Childhood Services Bureau is incorporating this policy in relation to preventing, reporting and managing fraud, abuse, and misuse of funds.

The department does not anticipate any adverse effect or any fiscal impact associated with this change to the manual.

Section 2-1 Non-TANF Child Care Eligibility – Application Process

The department is revising this manual section to include language to enhance the application process for child care assistance. The additional language allows applications for Best Beginnings Child Care Scholarships to be used for an additional 30 calendar days beyond the denial if missing documents are provided

within that timeframe. Applicants will not have to complete a new application packet under this change unless 60 calendar days have passed since their initial incomplete application submission. This change is an effort to reduce the amount of paperwork applicants complete to become a scholarship program participant.

Also, language has been added to simplify the income eligibility determination process for child care assistance applicants who are also receiving assistance through the SNAP program. Applicants qualifying for "express eligibility" will have the opportunity to indicate their participation in SNAP on their initial application or at the time of recertification. The intent behind this approach is to reduce resource allocation for application processing by the department's contractors. In addition, revisions include minor changes to the wording of this section to strengthen its intended meaning either by adding clarifying wording or deleting misleading wording.

The department does not anticipate any adverse effect or any fiscal impact associated with this change to the manual.

Section 2-2 Non-TANF Child Care Eligibility – Household Requirements

The department is revising this manual section to delete language providing for the Beginnings Child Care Scholarship to cover out-of-pocket expenses incurred by parent when child care is available to them at a reduced cost. The department will not make adjustments based on those types of arrangements where child care programs provide special considerations to parents that reduce their costs that is between the program and the parent.

The department does not anticipate any adverse effect or any fiscal impact associated with this change to the manual.

Section 2-2a Non-TANF Child Care Eligibility – Child Support

The department is revising this manual section to clarify the wording concerning the manner in which irregular child support income shall be handled, thereby clarifying its intended meaning. Currently, there is no continuity across the state as to how irregular child support income is figured.

The department does not anticipate any adverse effect or any fiscal impact associated with this change to the manual.

Section 2-3 Non-TANF Child Care – Non-TANF Activity Requirements

The department is revising this manual section to include language addressing when one parent of an intact family is participating in a court-ordered prerelease program. Language was also added to address when the parent's employer is a licensed or registered child care facility. To be in compliance with current requirements stipulated by the department's licensing bureau, a parent working in such a facility must be on the approved caregiver list for that facility or associated with the facility

by the Quality Assurance Division, Licensure Bureau at the time of scholarship application. Approved or associated caregivers must complete background checks as part of the Licensure Bureau and ensures that all individuals working around young children have passed some level of scrutiny. In addition, language has been added to clarify minimum work requirements for parents unable to provide care for their children due to severe disabilities and thus avoiding undue hardship on these families. Phrasing was added to clarify that paid legal labor actually means earning minimum wage. Finally, language has been added to clarify a work requirement waiver for individuals involved in field experiences or practicums, but not laboratory classes.

The department does not anticipate any adverse effect or any fiscal impact associated with the changes to the manual.

Section 2-4 Non-TANF Child Care – Household Income

The department is revising this manual section to include language to clarify the use of the Federal Minimum Wage as it relates to earned income as part of determining eligibility. Earned income paid as salary must be converted into a wage equivalent. Currently, wage earners are required to meet the Federal Minimum Wage if paid hourly as part of income eligibility. Changes to the qualifying language are taken directly from the Department of Labor and the Fair Labor Standards Act web sites. The department anticipates there may be adverse effect to some self-employed applicants depending on their financial situation.

The department does not anticipate any fiscal impact associated with the change to this manual.

Section 2-4a Non-TANF Child Care – Household Income - Self-employment

The department is revising this manual section to include language to identify the use of the Federal Minimum Wage as it relates to earned income as part of determining eligibility. Currently, there is no provision for self-employed individuals who take their income in the form of a salary. Changes to the qualifying language are taken directly from the Department of Labor and the Fair Labor Standards Act web sites. For self-employed applicants taking a salary, the amount earned must be converted into a wage equivalent in order to apply the same standard for wage earners with an employer to the self-employed individual. The department anticipates there may be adverse effect to some self-employed applicants depending on their financial situation.

The department does not anticipate any fiscal impact associated with the change to this manual.

Section 2-5 Non-TANF Child Care – Prospective Income

The department is revising this manual section to include language to identify the use of the Federal Minimum Wage as it relates to earned income as part of determining eligibility. Earned income paid as salary must be converted into a wage equivalent. The qualifying language is taken directly from the Department of Labor's web site and the Fair Labor Standards Act's web site.

The department does not anticipate any adverse effect or any fiscal impact associated with this change to the manual.

Section 2-6 Non-TANF Child Care – Income Table

The department is revising this manual section to include language addressing how income is handled when one parent of an intact family is participating in a court-ordered prerelease program. Income earned by an individual mandated by the court to be employed while residing in a court-ordered prerelease center is counted in the total income for the household. Other than costs associated with restitution, court-ordered counseling, or room and board, the individual has control over the use of income earned.

If a court orders a person be employed while residing in a prerelease center, employment earnings of that person remaining after the deduction of costs for court-ordered restitution and counseling, and for room and board in the center are counted as part of the total income of the household of that person.

The department does not anticipate any adverse effect or any fiscal impact associated with this change.

Section 2-7 Non-TANF Child Care Eligibility – Recertification

The department is revising this manual section to reduce the recertification reminder notice from 6 weeks to 45 days. Additional language includes the issuance of a closure notice 15 calendar days before the end-date of the eligibility period. Currently, no closure notice is sent. This change is intended to promote more timely notification for non-TANF participants.

The department does not anticipate any adverse affect or any fiscal impact associated with this change. In addition, revisions include minor changes to the wording of this section to strengthen its intended meaning either by adding clarifying wording or deleting misleading wording.

Section 3-3 TANF Child Care Eligibility & Coordination – Working Caretaker Relative Child Care

The department is revising this manual section to reduce the recertification reminder notice from 6 weeks to 45 days. Additional language includes the issuance of a closure notice 15 calendar days before the end-date of the eligibility period. Currently, no closure notice is sent. This change is intended to promote more timely

notification for TANF participants. Revisions include minor changes to the wording of this section to strengthen its intended meaning either by adding clarifying wording or deleting misleading wording. No substantive changes are intended or affected to this section.

The department does not anticipate any adverse effect or any fiscal impact associated with this change.

Section 6-1 Serving the Family – Child Care Referrals

Revisions to this manual provision include minor changes to the wording of this section to strengthen its intended meaning either by adding clarifying wording or deleting misleading wording. No substantive changes are intended or affected to this section.

The department does not anticipate any adverse effect or any fiscal impact associated with this change.

Section 6-2 Serving the Family – Legally Certified Providers

The department is revising this manual section to remove language associated with "Legally Certified In Home Providers" (LCI). Use of in-home providers will become a special designation within the "Legally Certified Provider" (LCP) provider type rather than its own category. This change will enable the department to apply all requirements for the provider type regardless of location of care.

Language has been added to identify how residency is determined. When the physical address is shared by both the provider and the parent and the parent is the owner or lessee, the requirements for in-home relative care apply. In-home relative care stipulates types of relationships that are covered under this type of care and how payment is made. The types of relationships have been expanded to include teen parents and special circumstances in order to enhance parental choice of this provider type.

Additional language included in this manual provision allows applications for this provider type to be usable for an additional 30 calendar days beyond the denial if missing documents are provided within that timeframe. Applicants will not have to complete a new application packet unless 60 calendar days have passed since their initial incomplete application submission. Once approved, an LCP certification will be granted for a one-year period. Should the family they provide care for become ineligible, the provider will become inactive. Allowing for one-year certifications reduces the allocation of resources by the centralized CCR&R handling these applications and reduces the frequency of reapplication by this provider type.

Language was added to this manual provision to include a search of Montana's Sexual and Violent Offenders Registry as part of background checks. Montana requires sexual and violent offenders to register with local law enforcement agencies

in the jurisdiction where they reside. Information about these offenders is then made available to the public. The federal Office of Child Care has included this registry in its guidelines as a tool to be used to determine eligibility for all programs providing child care. Because this category of provider receives no additional oversight, the Registry is a tool the department can use to screen applicants.

Clarifying language has been added to specify that all household members for an LCP age 18 and older must meet the same background check requirements regardless of location of care. Disqualifying records extend to all adult household members rather than just the provider. The federal Office of Child Care has included this scope of background checks in its guidelines to assist in protecting the safety of children in this type of care.

Revisions also include minor changes to the wording of this section to strengthen its intended meaning either by adding clarifying wording or deleting misleading wording.

The department does not anticipate any adverse effect or any fiscal impact associated with this change.

Section 6-3 Serving the Family – Issuing the Child Care Certification Plan

The department is revising this manual section to exclude the provision for sleep-time coverage for parents working or attending education during the night. The department is faced with reducing costs associated with the Best Beginnings Scholarship Program as a result of available funding and budget cuts. Sleep time is being eliminated as a result. The department expects this change to affect families and providers because of the reduced benefit. It will have a positive fiscal impact to the department because of the associated reduction in payments made. The amount of this impact is unknown as there is not a data element which tracks this benefit currently operated with policy alone.

Section 6-6 Serving the Family – Absent Day Policies – Maintaining the Continuity of Care

The department is revising this manual section to exclude the provision for holidays and hold-the-slot days. Previously, licensed or registered providers could bill the scholarship program for holidays falling within the authorization period even when the program was closed. For hold-the-slot, payments could be paid to licensed or registered child care providers to hold a child care slot even though the child is not in attendance such as summer when a noncustodial parent has the children normally in care. The department is faced with reducing costs associated with the Best Beginnings Scholarship Program as a result of available funding and budget cuts. Holiday and hold-the-slot provisions are being eliminated as a result. In addition, the certified enrollment days currently provided at a rate of 150 hours is being reduced to 70 hours annually. The department anticipates adverse effects to parents and providers and fiscal impacts associated with this change.

Section 6-7 Serving the Family – Invoice & Payment Processes

Revisions to this manual section include minor changes to the wording to strengthen its intended meaning either by adding clarifying wording or deleting misleading wording. No substantive changes are intended or affected to this section. The department does not anticipate any adverse effect or any fiscal impact associated with this change.

Section 6-9 Corrections and Overpayments

The department is revising this manual section to clarify language pertaining to intentional program violations. Several steps are involved in the assessment of penalties related to willful actions that result in intentional program violations. Provisions have been added to these steps for technical assistance (TA) to ensure that participants have opportunity to make adjustments in statements and information before penalties are assessed. These technical assistance provisions are the result of conversations with the Office of Fair Hearing and recent decisions rendered by them for appeals involving penalty assessments. Revisions also include minor changes to the wording of this section to strengthen its intended meaning either by adding clarifying wording or deleting misleading wording.

The department does not anticipate any adverse effect or any fiscal impact associated with this change.

Section 7-3a Best Beginnings Quality Child Care Initiatives – Infant Toddler Certification

The department is revising this manual section to include language relating to the Professional Development Incentive Awards. Limitations are set forth as to how many awards can be given within the same year and the requirements that must be met to receive these various incentive awards. Prior language didn't cover the limitations sufficiently. In addition, repetitive language for infant/toddler certification has been removed.

The department does not anticipate any adverse effect or any fiscal impact associated with this change.

Section 7-4a Best Beginnings Quality Initiatives – Mini Grants

The department is revising this manual section to reflect changes in how this program is administered and grant funds are used. Additional language clarifies limitations for programs and providers wishing to apply for grant funds as well as what the requirements are and how to apply. Revisions also include deleting wording related to the old way these grants were administered.

The department does not anticipate any adverse effect or any fiscal impact associated with this change.

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., December 23, 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/ Francis X. Clinch
Rule Reviewer

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

Certified to the Secretary of State November 14, 2011.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the acceptance of	)	PROPOSED ADOPTION AND
electronic records and electronic	)	REPEAL
signatures by the Business Services)	
Division and repeal of ARM 44.5.201)	
pertaining to filing for certification)	
authorities statement)	

TO: All Concerned Persons

1. On December 16, 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, State Capitol Building, at Helena, Montana, to consider the proposed adoption and repeal 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 December 2, 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 ACCEPTANCE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES (1) The only electronic records the secretary of state accepts for filing with the business services division are those specified in 44.5.301 and 44.6.113.

(2) Electronic signatures contained in the electronic records referenced in (1) must meet the definition set forth in 30-18-102(9), MCA.

(3) Any documents other than those specified in (1) that are filed with the business services division must be on paper or by facsimile and must be signed by the person executing the document.

(4) Electronic signatures, as defined in 30-18-102(9), MCA shall be accepted by the business services division if they meet the following criteria. The electronic signature shall:

(a) be unique to the person using it;

(b) either have an electronic authentication process attached or must be logically associated with the document;

(c) be capable of verification so that the acceptor of the electronically signed document can verify that the document was electronically signed by the person;

(d) be under the sole control of the person using it; and

(e) be linked to the data in such a manner that if the data are changed, the digital signature is invalidated.

(5) The name and title of the person signing digitally shall also be provided.

AUTH: 30-18-118, MCA

IMP: 30-18-117, MCA

REASON: The Secretary of State proposes the adoption of this rule to accommodate those entities in the business community whose internal business processes utilize electronic signatures. The Secretary of State has only agreed to conduct transactions by electronic means for annual reports and certain Uniform Commercial Code documents. It currently lacks the ability to accept electronic transactions for any other Business Services Division documents. In the interest of cooperating with the business community, the Secretary of State proposes this rule in order to accept documents that contain electronic signatures that meet the criteria set forth in this rule. The requirements for acceptance of an electronic signature are reasonably necessary to ensure that the signature is authentic without causing an undue burden on those who wish to use electronic signatures. The requirements were selected by examining other administrative rules concerning electronic signatures and relevant literature on their use.

4. The Secretary of State proposes to repeal the following rule:

44.5.201 FILING FOR CERTIFICATION AUTHORITIES

AUTH: 2-20-110, MCA

IMP: 2-20-109 MCA

REASON: In 2007, the Montana Legislature repealed the Electronic Transactions with State Agencies and Local Governments Act, including 2-20-110, MCA, which required that the Secretary of State register certification authorities and repositories. As a result, this rule is no longer necessary and is without authority. Therefore, it is reasonably necessary that the Secretary of State repeal the rule.

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: 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., December 23, 2011.

6. Jorge Quintana, Secretary of State's Office, has been designated to preside over and conduct this hearing.

7. 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 5 above or may be made by completing a request form at any rules hearing held by the Secretary of State.

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 and have been fulfilled. The primary sponsor, Representative Bob Lawson, was contacted by regular mail on May 31, 2011, at his mailing address.

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 14th day of November, 2011.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 44.6.201 pertaining to search) PROPOSED AMENDMENT
criteria for Uniform Commercial Code)
certified searches)

TO: All Concerned Persons

1. On December 16, 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 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 December 2, 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 amended provides as follows:

44.6.201 DEFINING SEARCH CRITERIA FOR UNIFORM COMMERCIAL CODE CERTIFIED SEARCHES (1) through (3) remain the same.

(4) Basic standards for searching individual names include:

(a) exact match of surnames and exact match of first names; and

(b) middle names become an initial or blank space;

(c) first names containing only an initial become an exact match to first names beginning with that initial; and

(d) suffixes are ignored.

(5) through (8) remain the same.

AUTH: 2-15-404, 30-9A-526, MCA

IMP: 30-9A-516, 30-9A-519, 30-9A-522, 30-9A-526, MCA

REASON: This amendment is reasonably necessary to conform to International Association of Commercial Administrators (IACA) standards for search logic and to further increase the discoverability of lien notices on file with the Secretary of State's office.

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., December 23, 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 14th day of November, 2011.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to a name availability standard for registered business names) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION)))

TO: All Concerned Persons

1. On December 16, 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, 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 December 2, 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) 444-5375; 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 DISTINGUISHABLE ON/IN THE RECORD(S) (1) Pursuant to Title 30, chapter 13, MCA, and Title 35, chapters 1, 2, 7, 8, and 12, MCA, "distinguishable on the record" and "distinguishable in the records" means that a registered business name must be sufficiently distinctive from another registered business name so that it does not cause confusion in an absolute or linguistic sense.

(2) Business names that contain key words that are different and do not copy a business name already on record are "distinguishable." For example, "Bill's Carpentry" is distinguishable from "Bill's Builders."

(3) Geographic and numeric designations, phonetic similarities, and abbreviations of words (other than business identifiers) will make business names "distinguishable." For example, "Two for One Diner's Club" is distinguishable from "241 Diner's Club."

(4) The following conditions will not make a registered business name distinguishable:

(a) the use of punctuation marks or special characters, for example: "R/D Construction" and "R D Construction" are not distinguishable;

(b) the use of articles "a," "an," or "the," for example: "The Painted Pony" and "Painted Pony" are not distinguishable;

(c) the use of business name identifiers or their abbreviations, for example: "ABC Inc.," "ABC Co.," and "ABC Corp." are not distinguishable;

(d) the substitution of an arabic numeral for a word, for example: "2" and "Two" are not distinguishable;

(e) the substitution of a lower case letter for a capital letter, for example: "d" and "D" are not distinguishable;

(f) the use of plurals, possessives, or tense, for example: plurals--"Fine Line Inc." and "Fine Lines Inc." are not distinguishable; possessives--"Employee Services" and "Employees' Services" are not distinguishable; and tense--"Swim Inc.," "Swimming Inc.," "Swims Inc.," and "Swam Inc." are not distinguishable; and

(g) the use of internet domain suffixes, for example: "whitehouse.com," "whitehouse.org," and "whitehouse.net" are not distinguishable.

AUTH: 35-1-1307, MCA

IMP: 30-13-202, 35-1-308, 35-1-311, 35-1-1031, 35-2-305, 35-2-307, 35-2-826, 35-4-206, 35-7-106, 35-7-112, 35-8-103, 35-8-108, 35-12-505, 35-12-1304, MCA

REASON: It is reasonably necessary for the Secretary of State to adopt this rule so that the public is advised of the name availability standards utilized by the Secretary of State to register business names. These standards conform to the American Bar Association's Official Comments that give guidance for determining whether a name is distinguishable.

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., December 23, 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 14th day of November, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
2.21.901, 2.21.902, 2.21.903, 2.21.906,)
2.21.907, 2.21.908, 2.21.909, 2.21.912,)
2.21.913, and 2.21.920 pertaining to)
disability and maternity leave policy)

TO: All Concerned Persons

1. On October 13, 2011, the Department of Administration published MAR Notice No. 2-21-461 regarding the proposed repeal of the above-stated rules at page 2101 of the 2011 Montana Administrative Register, Issue Number 19.

2. The Department of Administration has repealed ARM 2.21.901, 2.21.902, 2.21.903, 2.21.906, 2.21.907, 2.21.908, 2.21.909, 2.21.912, 2.21.913, and 2.21.920 as proposed.

3. A hearing was held on November 3, 2011. No one appeared and no comments were received.

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 November 14, 2011.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
2.21.6401, 2.21.6403, and 2.21.6422)
pertaining to performance management)
and evaluation)

TO: All Concerned Persons

1. On October 13, 2011, the Department of Administration published MAR Notice No. 2-21-465 regarding the proposed repeal of the above-stated rules at page 2105 of the 2011 Montana Administrative Register, Issue Number 19.

2. The Department of Administration has repealed ARM 2.21.6401, 2.21.6403, and 2.21.6422 as proposed.

3. A hearing was held on November 3, 2011. No one appeared and no comments were received.

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 November 14, 2011.

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

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I and II and amendment of) AMENDMENT
ARM 2.43.2608 pertaining to the)
return of PERS retirees to PERS-)
covered employment)

TO: All Concerned Persons

1. On September 22, 2011, the Public Employees' Retirement Board (PER Board) published MAR Notice No. 2-43-464 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1839 of the 2011 Montana Administrative Register, Issue Number 18.

2. The PER Board has adopted the above-stated rules as proposed: New Rule I (2.43.2611), and II (2.43.2612).

3. The PER Board has amended ARM 2.43.2608 as proposed.

4. No comments or testimony were received.

/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 November 14, 2011.

BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 6.6.6802, 6.6.6804, 6.6.6805,) REPEAL
6.6.6806, 6.6.6811, 6.6.6815,)
6.6.6820, 6.6.6821, and the repeal of)
6.6.6810, pertaining to Formation and)
Regulation of Captive Insurance)
Companies)

TO: All Concerned Persons

1. On October 13, 2011, the Office of the Commissioner of Securities and Insurance, Montana State Auditor published MAR Notice No. 6-196 regarding the public hearing on the proposed amendment and repeal of the above-stated rules at page 2118 of the 2011 Montana Administrative Register, issue number 19.

2. On November 2, 2011, the Office of the Commissioner of Securities and Insurance, Montana State Auditor held a public hearing to consider the proposed amendment and repeal of the above-stated rules.

3. The commissioner has amended ARM 6.6.6804, 6.6.6805, 6.6.6806, 6.6.6815, 6.6.6820, and 6.6.6821 exactly as proposed.

4. The commissioner has amended 6.6.6802 and 6.6.6811 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

6.6.6802 DEFINITIONS For purposes of these rules:

(1) remains as proposed.

(2) "Commissioner" means the ~~State Auditor and Commissioner of Insurance~~ Commissioner of Securities and Insurance, Montana State Auditor.

6.6.6811 ANNUAL AUDIT (1) through (4)(d) remain as proposed.

(5) A risk retention group licensed as a captive insurer shall utilize the Model Audit Rule as defined in ARM 6.6.3501 - 6.6.3521. A risk retention group licensed as a captive insurer shall only be exempt from the Model Audit Rule for such year if:

(a) the nationwide total of direct written plus assumed premiums is less than \$1,000,000 in any calendar year;

(b) there are less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year; and

(c) the commissioner has not made a specific finding that the insurer's compliance with the Model Audit Rule is necessary for the commissioner to carry out statutory responsibilities.

5. The commissioner has repealed ARM 6.6.6810 exactly as proposed.

6. The commissioner has thoroughly considered the comments received. A summary of the comments and the commissioner's responses are as follows:

COMMENT 1: The commenter supported the proposed amendments. The commenter noted that the definition of commissioner should reflect the actual title of the commissioner.

RESPONSE 1: The Office of the Commissioner of Securities and Insurance, Montana State Auditor (CSI) agrees. The amended language of 6.6.6802(2) has been changed to reflect the commissioner's full title.

COMMENT 2: The commenter supported the proposed amendments. However, the commenter noted that ARM 6.6.6811 refers to the Model Audit Rule. The Model Audit Rule has an exemption for companies which write less than \$1,000,000 total premium in Montana. However, most risk retention groups licensed as captive insurers would fall under the exemption to the Model Audit Rule because they are registered in Montana but writing little to no premium in Montana. The commenter suggested the language be broadened to restate the exemption to include only companies writing less than \$1,000,000 nationwide.

RESPONSE 2: The CSI agrees. The CSI has changed the rule by restating the exemption language from the Model Audit Rule with the commenter's proposed change to clarify when a risk retention group licensed as a captive insurer qualifies for an exemption from the Model Audit Rule.

/s/ Brett O'Neil
Brett O'Neill
Rule Reviewer

/s/ Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State November 14, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.94.3814 pertaining to the)
Treasure State Endowment Program)

TO: All Concerned Persons

1. On September 22, 2011, the Department of Commerce published MAR Notice No. 8-94-95 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1866 of the 2011 Montana Administrative Register, Issue Number 18.

2. The department has amended the above-stated rule 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: One comment was received regarding the length of time the department has to process a request for reimbursement of Treasure State Endowment Funds.

RESPONSE #1: The department appreciates the interest in this rulemaking; however, the comment does not pertain to this rule.

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

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State November 14, 2011.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.119.101 pertaining to the)
Tourism Advisory Council)

TO: All Concerned Persons

1. On August 11, 2011, the Department of Commerce published MAR Notice No. 8-119-94 pertaining to the proposed amendment of the above-stated rule at page 1439 of the 2011 Montana Administrative Register, Issue Number 15.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

/s/ DORE SCHWINDEN
DORE SCHWINDEN
Director
Department of Commerce

Certified to the Secretary of State November 14, 2011.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION AND
Rules I through XIII pertaining to) REPEAL
content standards for English)
language arts and literacy, the)
adoption of New Rules XIV through)
XVII relating to general standards and)
the repeal of ARM 10.54.3610)
through 10.54.3613, 10.54.3620)
through 10.54.3623, 10.54.3630)
through 10.54.3633, 10.54.3640)
through 10.54.3643, 10.54.3650)
through 10.54.3653, 10.54.3701)
through 10.54.3712 relating to)
communication arts content)
standards and performance)
descriptors)

TO: All Concerned Persons

1. On September 22, 2011, the Board of Public Education published MAR Notice No. 10-53-256 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1868 of the 2011 Montana Administrative Register, Issue Number 18.

2. The board has adopted the above-stated rules as proposed:

New Rule I	ARM 10.53.401
New Rule II	ARM 10.53.402
New Rule III	ARM 10.53.403
New Rule IV	ARM 10.53.404
New Rule V	ARM 10.53.405
New Rule VI	ARM 10.53.406
New Rule VII	ARM 10.53.407
New Rule VIII	ARM 10.53.408
New Rule IX	ARM 10.53.409
New Rule X	ARM 10.53.410
New Rule XI	ARM 10.53.411
New Rule XII	ARM 10.53.412
New Rule XIII	ARM 10.53.413
New Rule XIV	ARM 10.53.101
New Rule XV	ARM 10.53.102
New Rule XVI	ARM 10.53.103
New Rule XVII	ARM 10.53.104

3. The board has repealed the above-stated rules as proposed.

4. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT #1: Mr. Robert Bayuk, representing the Montana Indian Education Association (MIEA), read and presented a letter thanking the board for its support, and the inclusion of Montana Indian Education for All into the content standards for English language arts and literacy. The letter also thanks the Office of Public Instruction for facilitating the process to ensure inclusion of Montana Indian Education for All into the English language arts and literacy standards.

RESPONSE: The board thanks Mr. Bayuk for his comments on behalf of Montana Indian Education for All and concurs.

The board recognizes the efforts of the Council of Chief State School Officers and National Governors Association for providing the foundational research and structure of the Common Core State Standards. In addition, the board recognizes the facilitation by the Office of Public Instruction to engage a broad review of the common core standards by Montana educators.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Patty Myers
Patty Myers, Chair
Board of Public Education

Certified to the Secretary of State November 14, 2011.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rules I through XVII pertaining to	)	REPEAL
content standards for mathematics)	
and repeal of ARM 10.54.4010)	
through 10.54.4013, 10.54.4020)	
through 10.54.4023, 10.54.4030)	
through 10.54.4033, 10.54.4040)	
through 10.54.4043, and 10.54.4101)	
through 10.54.4112 relating to)	
mathematics content standards and)	
performance descriptors)	

TO: All Concerned Persons

1. On September 22, 2011, the Board of Public Education published MAR Notice No. 10-53-257 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1931 of the 2011 Montana Administrative Register, Issue Number 18.

2. The board has adopted the above-stated rules as proposed:

New Rule I	ARM 10.53.501
New Rule II	ARM 10.53.502
New Rule III	ARM 10.53.503
New Rule IV	ARM 10.53.504
New Rule V	ARM 10.53.505
New Rule VI	ARM 10.53.506
New Rule VII	ARM 10.53.507
New Rule VIII	ARM 10.53.508
New Rule IX	ARM 10.53.509
New Rule X	ARM 10.53.510
New Rule XI	ARM 10.53.511
New Rule XII	ARM 10.53.512
New Rule XIII	ARM 10.53.513
New Rule XIV	ARM 10.53.514
New Rule XV	ARM 10.53.515
New Rule XVI	ARM 10.53.516
New Rule XVII	ARM 10.53.517

3. The board has repealed the above-stated rules as proposed.

4. The board has thoroughly considered the comments and testimony received. A summary of the comments received and the board's responses are as follows:

COMMENT #1: Mr. Robert Bayuk, representing the Montana Indian Education Association (MIEA), read and presented a letter thanking the board for its support, and the inclusion of Montana Indian Education for All into the content standards for mathematics. The letter also thanks the Office of Public Instruction for facilitating the process to ensure inclusion of Montana Indian Education for All into the mathematics standards.

RESPONSE: The board thanks Mr. Bayuk for his comments on behalf of Montana Indian Education for All, and concurs.

COMMENT #2: Mr. Bruce Swanson commented on his concern that the "strands and spiral" framework is embedded into the proposed mathematics standards. The use of the "strands and spiral" framework, he believes, reduces the cognitive development of students.

RESPONSE: The board thanks Mr. Swanson for his comment; however, respectfully, does not concur. The board recognizes that the proposed standards are college and career ready and more rigorous than the current mathematics content standards. The new common core standards focus on grade-by-grade learning expectations, not a spiraling framework.

The board recognizes the efforts of the Council of Chief State School Officers and National Governors Association for providing the foundational research and structure of the Common Core State Standards. In addition, the board recognizes the facilitation by the Office of Public Instruction to engage a broad review of the common core standards by Montana educators.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

/s/ Patty Myers
Patty Myers, Chair
Board of Public Education

Certified to the Secretary of State November 14, 2011.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 12.11.610, 12.11.615, and)
12.11.620 regarding recreational use)
rules on the Bitterroot River, Blackfoot)
River, and Clark Fork River)

TO: All Concerned Persons

1. On May 26, 2011 the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-368 pertaining to the proposed amendment of the above-stated rules at page 767 of the 2011 Montana Administrative Register, Issue Number 10.

2. The commission has amended ARM 12.11.610, 12.11.615, and 12.11.620 with the following changes, stricken matter interlined, new matter underlined:

12.11.610 BITTERROOT RIVER (1) Bitterroot River is closed to use of any motorized ~~propelled~~ watercraft except:

(a) any motorized watercraft powered by 20 horsepower or less are permitted from October 1 through January 31 from the headwaters of the Bitterroot River to the confluence with the Clark Fork River; and

~~(b) any motorized watercraft are permitted between Florence Bridge in Ravalli County and the Buckhouse Bridge on Highway 93 in Missoula County from May 1 through June 15.~~

12.11.615 BLACKFOOT RIVER (1) The Blackfoot River and its tributaries are closed to use of any motorized watercraft from its the headwaters of the Blackfoot River to the confluence with the Clark Fork River ~~is closed to use for any motorized propelled watercraft.~~

12.11.620 CLARK FORK RIVER (1) ~~The Clark Fork River:~~

~~(a) and its tributaries are closed to any motor propelled watercraft from the headwaters to the confluence with the Bitterroot River;~~

~~(b) is restricted to motor propelled watercraft 20 horsepower or less from the confluence with the Bitterroot River to the Interstate Bridge east of Ninemile Creek; and~~

~~(c) is closed to any motor propelled watercraft from St. Johns Fishing Access Site to the mouth of Fish Creek.~~

(1) The Clark Fork River and its tributaries, unless specified elsewhere in this chapter, are closed to all motorized watercraft, including personal watercraft as defined in 23-2-502, MCA, except:

(a) from Kelly Island (Spurgin Road) Fishing Access Site boat ramp and the Grass Valley Ditch Diversion to Harper's Bridge Fishing Access Site:

(i) any motorized watercraft, except personal watercraft as defined in 23-2-502, MCA, are permitted from May 1 to June 15; and

(ii) any motorized watercraft 20 horsepower or less are permitted from October 1 through January 31.

(b) from Harper's Bridge Fishing Access Site to St. John's Fishing Access Site:

(i) any motorized watercraft, except personal watercraft as defined in 23-2-502, MCA, are permitted from October 1 to June 15; and

(ii) any motorized watercraft 20 horsepower or less are permitted from June 16 through September 30.

(c) from the mouth of Fish Creek to the Montana border.

3. The commission has thoroughly considered the comments received. A summary of the comments received and the commission's responses are as follows:

Comment 1: The commission received multiple comments from people concerned for the safety of river users in the presence of high speed motorboats. Several commented that the relatively small channel size and braided sections of river found on the Clark Fork and Bitterroot contribute to the problem. Several people stated that jet boats need to maintain a high rate of speed to avoid beaching in shallow sections of water and that these are the same areas popular among nonmotorized users. Some expressed specific concerns that waves caused by motorboats create safety issues for nonmotorized users specifically at Brennan's Wave on the Clark Fork River. A few comments stated that swimmers, inner tubers, and kayakers have low profiles in the water and are especially hard to see when travelling in a fast-moving motorboat. Some comments stated that lakes are a more appropriate place for motorboats to operate safely.

Response 1: The commission adopted the rule amendments to address concerns about the safety of river users in the presence of fast moving motorized watercraft and personal watercraft. The prohibition on motorized use is tied to sections of the river where the volume of use is highest and the potential for accidents is greatest. Similarly, the sections of river that remain open to unrestricted motorized use are sections where the volume of use is less and the potential for accidents is lower. The commission received 109 comments with concerns particular to personal watercraft use on the rivers indicating that personal watercraft are a primary source of social conflict and safety concern.

Comment 2: The commission received a few comments questioning whether the department has documented collisions between power boats and nonmotorized users on the rivers because no factual data was provided to validate the concerns.

Response 2: The department does not have record of serious boating collisions on these sections of river. The commission concluded, however, that the potential for collisions to occur is greater in the sections of river close to Missoula that are commonly used by nonmotorized users. Brennan's Wave on the Clark Fork is a popular location for kayakers. The Clark Fork through Missoula is popular for

many forms of nonmotorized use. The public has provided numerous descriptions of close encounters with motorboats or personal watercraft and their concern for safety. The department has also observed motorboats operating in close proximity to other recreationist on the sections of river close to Missoula.

Comment 3: The commission received a comment stating it is not necessary to wait until a boat accident occurs before implementing restrictions and preventive policies and rules are frequently made based on the potential for accidents.

Response 3: The commission concurs that it is not necessary for accidents to occur prior to adopting safety measures and has amended the rules to minimize the potential for boating accidents.

Comment 4: The commission received a few comments stating motorboats often rescue nonmotorized river users that have encountered problems on the water.

Response 4: Recreationists are responsible for their own safety and should be aware of inherent risks, know their own capabilities, and know how to respond to emergency situations. Search and rescue operations are exempt from the restrictions stated in this rule according to ARM 12.11.505.

Comment 5: The commission received one comment stating there should be a section of river set aside just for motorboats.

Response 5: The rule amendments maintain a variety of opportunities for both motorized and nonmotorized river use. The commission only prohibited motorized use in places where social conflict concerns were highest. Less restrictive measures were taken elsewhere. Establishing a section of river only open to motorized users was not viewed as necessary or appropriate for the conditions present.

Comment 6: The commission received a few comments stating that log jams, submerged logs, and rocks make it dangerous for motor boats to operate on these rivers due to the speed of their travel.

Response 6: Recreationists are responsible for their own safety and should be aware of inherent risks, know their own capabilities, and know how to respond to emergency situations.

Comment 7: The commission received a few comments regarding overcrowding. Some comments stated that overcrowding is the issue and restrictions should apply to all river users not just motorized users. Some comments stated that nonmotorized river use has increased and that it is contributing to the problem.

Response 7: The commission acknowledges the number of people recreating on these rivers may be a contributing factor to the public's safety

concerns and social conflicts. The department does not have specific data on the volume of recreation use occurring on these rivers; however, input from the public and observations by department personnel indicates use has increased in recent years during the summer months and concerns are heightened when motorboats operate in the more frequently used sections of the rivers and the adopted amendments balance the interests and concerns of all users and maintain a diversity of recreational opportunities.

Comment 8: The commission received many comments regarding the negative impacts of the noise from motorboats and personal watercraft stating it detracts from the recreational experience of others and scares off the wildlife and birds from the river corridor.

Response 8: The commission acknowledges the many forms of recreation that seek an experience in the absence of motor sounds and also acknowledges motorboat operators enjoy recreating on rivers. The commission ultimately adopted amendments that are intended to balance the interests of all river users and provide sections of river and times of year when people can recreate in the absence of motorboats and associated motor noises.

Comment 9: The commission received multiple comments expressing concern about personal watercraft and recommending the prohibition of personal watercraft due to the personal watercraft users commonly travel in circles on the water to jump wakes and personal watercraft need to travel at a high speed to maintain maneuverability. Some comments stated that personal watercraft operate in close proximity to other users posing safety concerns.

Response 9: The commission adopted rules prohibiting personal watercraft based on the number of comments expressing specific concern over personal watercraft, the knowledge that personal watercraft are often used in a manner that is incompatible with other types of river use, and the public's safety concerns related to personal watercraft operating in close proximity to low profile boaters, swimmers, and anglers. The commission concurred that unlike other types of motorboats that are more commonly used as transportation from one location to another on a river, personal watercraft are often operated in a smaller area and in a circular manner for the purpose of wake jumping and this practice may be appropriate on some water bodies but that it raises safety concerns on a river where use is high and the channel width is relatively narrow.

Comment 10: The commission received one comment expressing concern that a twenty horsepower motor restriction would not apply to the use of personal watercraft. Instead, they recommended that the commission prohibit all motorize watercraft use on the Clark Fork from the Blackfoot River confluence to Harper's Bridge fishing access site.

Response 10: The department's research did not identify any types or brands of personal watercraft that are equipped with twenty horsepower or smaller engines.

However, the commission has adopted rules prohibiting personal watercraft on all sections of river affected by these rules.

Comment 11: The commission received many comments expressing concern that motorboats negatively impact natural resources in and along the Clark Fork, Blackfoot, and Bitterroot Rivers including erosion, increased turbidity, water contamination from fuel and oil, and air contamination from engine exhaust. Some comments pointed to scientific studies and areas identified as important to a particular species. Some comments described personal observations of impacts associated with motorboats.

Response 11: The rule amendments were proposed in response to public concern over public safety and social conflicts. While natural resources are important to consider when managing recreation in river and riparian corridors, the commission did not amend the rules for the purpose of addressing natural resource impacts from motorboats use on these rivers. The department's resource specialists reviewed the environmental impacts of the amendments and based on the scientific information available concluded that motorized activity permitted under this decision would not have a significant impact on the resources.

Comment 12: The commission received many comments expressing concern that restrictions on motorboats in one section of a river could result in this use being displaced to another section of the river specifically sections of the Clark Fork River and the Bitterroot River. The comments expressed concern that an increase in motorized use in these open sections would reduce the quality of the experience for motorized and nonmotorized users and could lead to safety concerns. One comment suggested that nonmotorized use be prohibited in these sections to address the safety concerns and others suggested that the commission allow motorboats to use these sections during the spring when the water is high and close it the rest of the year.

Response 12: The commission modified its original rule proposal by lengthening the section of the Clark Fork open to motorized use with the exception of personal watercraft. The intent was to disperse use across a longer section of the river and avoid the potential for congestion and increased public safety concerns in a shorter section of river. The commission did not see a need for limiting use to the spring when river flows are higher.

Comment 13: The commission received several comments that the problem has to do more with the behavior of motorboat operators stating the inappropriate behavior of the minority can ruin it for the majority of motorized users who operate their watercraft in a respectful and safe manner, nonmotorized users are mainly complaining about the behavior of intoxicated boaters which is an enforcement issue and motor restrictions are not the appropriate response to this problem. Some comments suggested that the department increase its enforcement presence rather than imposing restrictions.

Response 13: Enforcement presence and river patrols can help to deter or correct unsafe behavior; however, the popularity of nonmotorized river use in the vicinity of Missoula makes it difficult to address public safety concerns through enforcement alone. The commission decided that in the sections of river with a higher concentration of nonmotorized use it would be more effective to prohibit motorized watercraft. The commission retained opportunities for motorboats, except personal watercraft, in other sections of river and the department will continue to use enforcement and river patrols to help address safety concerns.

Comment 14: The commission received several comments recommending a restriction on motor size instead of prohibiting motorboats altogether because smaller motors are quiet, do not leave wakes, and can be of assistance when there is an upriver wind.

Response 14: The commission considered all options and decided to prohibit motorboats on the sections of river where the public's safety concerns and social conflicts were greatest. The commission adopted less restrictive rules on other sections of river where these concerns were less prevalent.

Comment 15: The commission received several comments stating twenty horsepower motors do not provide enough power for a boat to safely navigate in rivers and expressed specific concern for waterfowl hunters in the fall when emersion in cold water is a concern and the potential for boating accidents due to insufficient horsepower.

Response 15: A fifteen horsepower restriction was in place on some sections of river prior to the amendment of these rules. The commission increased the horsepower allowed to twenty horsepower in recognition of changing industry standards for portable motors. It is important for boaters to assess their skills and experience relevant to the conditions present and determine whether it is safe to proceed.

Comment 16: The commission received a few comments that the amount of horsepower available at the engine prop or jet is less than that at the head of the engine. One comment requested that the power be measured at the motor head and others requested the power be measured at the jet.

Response 16: For enforcement purposes and ease of compliance, the horsepower restriction will apply to the amount of horsepower present at the motor head.

Comment 17: The commission received several comments opposed to increasing the maximum horsepower from fifteen to twenty horsepower stating fifteen horsepower is sufficient for waterfowl hunting and fishing. A few comments recommended that the maximum horsepower be reduced below fifteen horsepower.

Response 17: Increasing the maximum horsepower from fifteen to twenty horsepower will result in a single, consistent horsepower restriction that will accommodate the majority of recreationists who use a portable motor while waterfowl hunting and fishing.

Comment 18: The commission received a few comments that two-stroke boat engines should be phased out and eventually prohibited. They recommended requiring four-stroke boat engines for the reason that they are cleaner and quieter.

Response 18: The commission at this time does not see a need to require four-stroke engines.

Comment 19: The commission received several comments concerned the amendments would restrict motorized use for emergency response services.

Response 19: Search and rescue operations are exempt from the restrictions stated in this rule according to ARM 12.11.505.

Comment 20: The commission received several comments suggesting zoning the river use or allowing motorboats to use the river at certain times of the day or certain days of the week.

Response 20: The commission believes these suggestions would be difficult to enforce and confusing to the public.

Comment 21: The commission received a few comments recommending speed limits instead of horsepower restrictions.

Response 21: The dynamic nature of a free-flowing river would make enforcing a speed limit difficult. River conditions may require more speed in order to navigate a section of river. The commission adopted restrictions that would most appropriately address the public's social and safety concerns.

Comment 22: The commission received several comments recommending the department increase its educational efforts about boating safety, etiquette, and respect for the resources and other users including expanding the boating safety course to offer refresher courses, developing a boating education program tailored to these sections of river, making it mandatory after three years of a voluntary program, and developing a training program for river users that is similar to the Hunter Education Program.

Response 22: The commission agrees that boating safety education is important and will share these suggestions with the department.

Comment 23: The commission received comments that there are ample opportunities for motorboats on other rivers in western Montana and motorboats can be transported to other less used rivers.

Response 23: The commission wanted to maintain some opportunities for motorboats to operate in the Missoula vicinity. In addition, the commission wanted to minimize negative effects of displaced and concentrated motorized use on other rivers as a result of its decision.

Comment 24: The commission received a few comments stating that there are only about twenty miles of river available for motorboats during the main fishing season in Missoula County. They commented that there are hundreds of miles of stream available for nonmotorized use.

Response 24: The rule amendments provide opportunities for some motorized use while at the same time addressing public safety and social conflict concerns.

Comment 25: The commission received comments supporting the proposed restrictions on motorboats but requested that they be expanded to more sections of these rivers and for longer periods of time.

Response 25: The amendments provide opportunities for some motorized use while at the same time addressing the public's safety and social conflict concerns. The commission views its decision as a balance between those in favor of restricting motorized use and those advocating for no restrictions.

Comment 26: The commission received a few comments requesting that the rules should be simple, consistent, and easy to understand.

Response 26: The commission agrees that simplification of rules is a worthy goal but becomes more challenging as the complexity of the issues increases. In order to accommodate a variety of different user groups and interests, it is necessary to develop different rules for different sections of rivers.

Comment 27: The commission received comments concerned the administrative rules for river recreation management may be overlooked. One person commented that the citizen advisory committee tasked with examining these issues did not have adequate representation of motorized river users and the commission is required to consider the best available data but does not have any scientific data showing that a problem exists or the scope of the problem. Also, the department has made no attempt to obtain information needed to adopt a new management plan and the commission has not considered less restrictive management actions before proceeding to more restrictive management actions.

Response 27: The department and the commission consulted the statewide river recreation rules, ARM 12.11.401 through 12.11.455, throughout the rulemaking process. The department tasked a subgroup of the regional citizen advisory committee to consider the issues and make a recommendation to the commission. The subgroup included people with motorboat experience and interests. In

developing its recommendations for commission consideration, the department considered the best available information from staff, input from the public that use a variety of watercraft, and the recommendations of the subgroup. The commission made its final decision based on this information plus extensive public comment that provided opinion regarding future management of the watercraft on the rivers, and specific information about river use levels and user-specific information regarding time and place of use and experiences. Public comment and staff input provided data for making and revising department recommendations and the commission decision. The rule amendments maintain a variety of recreational opportunities and there are still sections of river with minimal or no restrictions on motorboats. In addition, the department will continue with nonrestrictive measures such as boating safety education, river recreation etiquette, and maintaining a presence in the field.

Comment 28: The commission received several comments stating allowing motorized use to continue without restrictions will have negative economic impacts. The Clark Fork River is important to the local tourism economy and that visitors are attracted to it for various types of nonmotorized use and a proliferation of motorboat use would detract from the experience.

Response 28: The commission recognizes the overall value of river-related recreation and tourism to the local economy. The amendments are intended to maintain a variety of quality recreation opportunities and this in turn should be of value to the economy.

Comment 29: The commission received a comment expressing concern that the current use of motorboats may be violating the good neighbor rule citing 23-1-126(1), MCA and underscored the goal of recreational use having no impact on adjoining private and public land by preventing impact on the adjoining land from noxious weeds, trespass, litter, noise and light pollution, bank erosion, and loss of privacy. The commission also received a comment requesting the commission fulfill the requirements of 23-1-127, MCA which requires "implementation of safety and health measures required by law to protect the public", by separating motorized users from vulnerable nonmotorized users and questioned whether encouraging high-powered boat use during spring runoff when the river is filled with large floating debris is implementing appropriate safety measures.

Response 29: The good neighbor policy, found at 23-1-126 and 23-1-127, MCA, only applies to properties adjacent to lands acquired or purchased by the department. The good neighbor policy does not apply to situations, as the one here, where the commission adopts rules on water bodies within its jurisdiction.

Comment 30: The commission received several comments that river flows will dictate the use of motorboats on these rivers and that restrictions are not necessary stating during high water in the spring the motorized boats are able to use the river but there are few other users out recreating that time of year and motorboat use will dissipate once the flows get low, which is when the nonmotorized users tend to use the river more.

Response 30: Establishing a set date on the calendar enables the public to easily determine when a particular use is allowed. This also simplifies enforcement efforts. The dates selected for the regulations are intended to coincide with average historic flow conditions.

Comment 31: The commission received comments supporting a prohibition on motorboats on the Blackfoot and Clark Fork Rivers in the vicinity of the Milltown Dam location and noted that this area will likely experience increased use by nonmotorized users.

Response 31: The commission agrees that the removal of Milltown Dam and the addition of a state park could result in more nonmotorized use.

Comment 32: The commission received a few comments that the department should encourage people to be more tolerant and learn to share the river instead of proposing restrictions that could lead to greater intolerance among the various user groups and people who live along a river need to be tolerant of the different types of recreation that occur on a public waterway, much like living along a public street.

Response 32: The commission appreciates these comments and agrees that tolerance among different types of recreation groups is important. Montana's waterways are public domain and the commission agrees people recreating on rivers can help to prevent conflicts with landowners by respecting private property and practicing river etiquette.

Comment 33: The commission received a few comments that a portion of the department's funding comes from motorboats and therefore it is not fair to restrict their opportunities.

Response 33: The department does receive Wallop Breaux funding to develop and improve boat access sites across the entire state and these rules do not affect nor are affected by this funding source.

Comment 34: The commission received comments from some people stating that jet boats and other forms of motorboats are necessary for those people who are physically incapable of operating a float boat.

Response 34: Some individuals with disabilities use motorboats to recreate on rivers and others use nonmotorized watercraft that has been modified for use by individuals with disabilities. The commission seeks to provide opportunities for those with physical limitations to enjoy our river resources in both motorized and nonmotorized boats. The commission has retained areas where motorboats are allowed and provided for other areas where motorboats are restricted.

Comment 35: The commission received a few comments expressing specific concern about the impacts of motorboats on angling. One commented that angling

on the Bitterroot during the winter is becoming more popular and the wake created by motorboats is inappropriate, particularly when the water level is low. Another comment stated that motorboats have a negative impact on anglers fishing for rising fish.

Response 35: The commission wished to provide a balance between motorized and nonmotorized use during the winter on the Bitterroot. The amount of motorized use that occurs in the winter is usually low but it does provide an opportunity for waterfowl hunters and anglers.

Comment 36: The commission received a comment stating that the department's analysis lacked data and was subjective.

Response 36: The commission points out that the department used the best available information in assessing the predicted environmental outcomes of amending the rules. Sources of information included extensive input from the public, staff observations in the field, and input from staff specialists.

Comment 37: The commission received a comment requesting that special permits be available to use motorboats for conducting research, survey, and engineering work.

Response 37: ARM 12.11.505 allows for the director to approve exceptions to these rules for purposes such as safety patrols and scientific surveys.

Comment 38: The commission received some comments supporting no-wake restrictions but opposed to rules that would prohibit motorized use.

Response 38: No-wake restrictions are frequently used on lakes but are less effective on rivers where river current and other conditions can create white water that can be mistaken as a wake.

Comment 39: The commission received several comments that the majority of the river users are nonmotorized users and that it will be easier to adopt restrictions on motorized use now, as opposed to adopting restrictions when motorized use has become more entrenched.

Response 39: The commission appreciates the interest in this rulemaking process.

Comment 40: The commission received a comment that policy and rules should be for the purpose of creating diverse opportunities for all users while maintaining a healthy ecosystem.

Response 40: The commission recognizes the benefits of providing a variety of recreational opportunities and maintaining healthy ecosystems.

Comment 41: One comment stated that the proposed rule amendments would eliminate one of the two publicly available boat ramps in the greater Missoula area, referring to the Kelly Island boat ramp.

Response 41: The commission has adopted the rule with amendments allowing seasonal use of the Kelly Island boat ramp and a possible boat ramp at Harper's Bridge Fishing Access Site.

Comment 42: The commission received a comment that for safety reasons, the restriction on motorized use should apply to the section of the Clark Fork where the Grass Valley diversion dam is located, near Kelly Island.

Response 42: The commission has decided to use the Grass Valley diversion dam as a break for determining boating regulation changes. The diversion, in conjunction with the Kelly Island (Spurgin Road) boat ramp, is the upstream boundaries for motorized access on the Clark Fork. Above these locations, motorized use on the Clark Fork River is prohibited.

Comment 43: The commission received a comment suggesting that the department post signs at the entrance to the narrower side channels prohibiting entry by motorboats.

Response 43: The dynamic nature of changing river channels would make posting accurate signage and enforcement very difficult and potentially confusing to the public.

Comment 44: The commission received a comment suggesting a year-round horsepower limit on the Bitterroot River.

Response 44: The commission wants to retain a variety of recreational opportunities on the Bitterroot River while at the same time addressing public safety and social conflict concerns. The commission adopted a horsepower limit for the waterfowl season.

Comment 45: The commission received a comment stating that it does not make sense to prohibit motorboats on the Clark Fork River around Missoula and allow this use on the Bitterroot which is smaller in size and subject to the same social and safety concerns.

Response 45: Public comment received during the public process did not indicate frequent conflict or safety concerns during times when motorized use was permitted in this section. The opposite was true of comments received in regard to use on the Clark Fork River around Missoula, where reports of user conflicts and safety concerns were much more prevalent.

Comment 46: The commission received multiple comments suggesting variances to the boundaries and restriction within the boundaries stating multiple reasons.

Response 46: The commission adopted the rules with the boundaries and restrictions to address social conflicts and the public's concerns about safety in the presence of fast-moving motorized watercraft and personal watercraft. The commission amended restrictions and boundaries on the Clark Fork River to ensure that Kelly Island Fishing Access Site was available for motorized watercraft when permitted. Boundaries and restrictions were designated to address concerns regarding volume and types of use and social conflicts, but still provide diverse opportunities for recreation.

/s/ Bob Ream

Bob Ream, Chairman
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State November 14, 2011.

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

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

TO: All Concerned Persons

1. On August 25, 2011, the Board of Private Security (board) published MAR notice no. 24-182-33 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1603 of the 2011 Montana Administrative Register, issue no. 16.

2. On September 19, 2011, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the September 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 stated the board should not raise the fees, stating that it will cut into profit margins and create a burden on security companies during difficult financial times.

RESPONSE 1: After considerable review and discussion of the budget and income, the board concluded that it is reasonably necessary to increase fees as proposed to keep fees commensurate with program costs as required by 37-1-134, MCA.

The board has run deficits in its cash balance in increasing amounts over the last three fiscal years: -\$33,000 in FY 2008, -\$46,000 in FY 2009, and -\$107,000 in FY 2010. A fee increase was done in 2010, but despite the increase, the board ended the fiscal year with a negative cash balance of -\$52,884. That fee increase did not raise the cash balance because it went into effect after the renewal period when the majority of the board's income would have been received.

During FY 2011, as a cost savings measure, a full-time application specialist position was eliminated for the board, leaving the program manager to do both jobs. The board intends to only replace this position as a half-time position and these expenses have been included in the projection discussed below.

It is necessary to raise fees to restore a positive cash balance and increase revenue to meet the board's budgetary appropriation. The board recognizes current economic conditions, but maintains that the increases proposed is reasonable. If the board continues to control expenses and does not encounter any unexpected expenses, the board projects a \$137,000 cash balance at the end of FY 2014.

COMMENT 2: A commenter stated the board should not raise fees for security guards and that a hundred dollars for a security guard license is grossly exorbitant. The commenter asserted that the guards' low hourly wages make it difficult to pay higher license fees, especially when their employers do not pay the license fees.

RESPONSE 2: The board does not control the hourly wage of licensees nor employers' policies on paying their employees. For the response to the remainder of the comment, please see Response 1.

COMMENT 3: One commenter opined that the state could reduce its annual operating costs by not renewing all licenses every year, or not all at the same time. The commenter suggested staggering renewal periods and having a longer period of renewal, such as four or six years, will save costs.

RESPONSE 3: Because the number of licensees is relatively few, the workload at renewal time is manageable, and staggering or extending the renewal period would not have a significant cost benefit. If the renewal period were extended to cover more than one year, the renewal fees would need to be raised accordingly to cover the operating expenses for the lengthened time period and may instead become a hardship for many licensees. The board notes that during renewal period is when the board generates approximately 67 percent of its revenue for the fiscal year.

COMMENT 4: One commenter opined that introducing the fee increase now, after the legislative session, amounts to an end run around the Legislature. The commenter further stated that the fee increases constitute a tax increase, appear legally questionable, and suggested that if the board cannot balance its books, it is the fault of the board administrators. The commenter asserted that employees should be laid-off to balance the budget, rather than by increasing the fees.

RESPONSE 4: The board notes that licensure fees are not set forth in statute and do not require a bill introduced into the Legislature to be changed. Rather, the Legislature, in 37-1-134, MCA, has delegated the setting and charging of fees to the licensing boards through the administrative rulemaking process. The board notes that the Legislature continues to monitor and have jurisdiction over the rulemaking of the boards, and through its Economic Affairs Interim Committee, has reviewed the proposed fee increase under present consideration.

The fees are not a "tax" in the sense that they are not levied to support the general fund. The fees are imposed on individuals engaging in particular occupations and professions and fund a special revenue fund that only operates to regulate the particular occupations and professions.

For the response to the remainder of the comment, please see Response 1.

COMMENT 5: A commenter suggested the board streamline its operations and engage in more diligent time management to avoid raising fees, or that the board delay raising them until the business climate improves.

RESPONSE 5: See Response 1.

COMMENT 6: Commenters asserted that fees should not be raised in the proposed amounts and not this frequently, and pointed out that the board just raised fees in 2010 and should not raise them again.

RESPONSE 6: See Response 1.

COMMENT 7: One commenter suggested that if the board enforced licensing requirements against loss prevention and unlicensed security companies providing services, it would not be necessary to raise licensure fees.

RESPONSE 7: Loss prevention for retail merchants is exempt under 37-60-105(b), MCA. As for other unlicensed practice of private investigator and private security, neither Title 37, chapter 60 (Private Investigators, Private Security and Fire Entities, and Process Servers), nor Title 37, chapter 1 (General Provisions), authorize such inspections. This authorization could be achieved only through legislation. If it were introduced, the board would have to undergo an analysis to provide a fiscal impact to determine both income and expenses associated with such a proposal.

The board and department have the authority to investigate and take action on complaints of unlicensed practice filed by members of the public and, in most cases, this the only way the board finds out about such allegations. The costs of conducting such investigations presently are born out in the current fee proposal.

COMMENT 8: A commenter stated that if the board hired enforcement staff to audit security agencies every six months, and fined those operating without licenses, the board could reduce the amount of the fee increase.

RESPONSE 8: See Response 7.

COMMENT 9: A commenter stated the \$20 increase for a firearm endorsement is not commensurate with the actual cost to type the word "firearm" on a license.

RESPONSE 9: The board notes that the fee increase is commensurate with the entire cost of processing a firearm endorsement. To obtain a firearm endorsement, the security guard must qualify or requalify annually and submit proof of having done so to the board office. Some security guards (or the company on behalf of individual security guards) submit more than one certification a year.

Each time the board office receives such documentation, staff must scan the paperwork electronically and update the individual security guard's record. At renewal time, a percentage of all firearm endorsements has expired, requiring the license to be printed without the endorsement. When staff receives the request and documentation to support adding the firearm endorsement again, staff must process that documentation and print a new ID card.

COMMENT 10: A commenter noted that the board used to provide annual training, but due to lack of interest and costs, training is no longer being provided. The

commenter asserted that, even with this cut, the board is still raising fees and it is not apparent what licensees get, if anything, from their licensure fees.

RESPONSE 10: The purpose of the board is to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by security companies and their licensed employees, firearms instructors, private investigators, or process servers. In this sense, the beneficiary of the licensing system is not the licensees, but the public.

The board may consider providing annual training once again when the financial status has improved. In the meantime, the types of costs that are part of operating the program include utilities, rent, equipment, supplies, mail, personnel, a new database, compliance and enforcement actions, and legal costs.

COMMENT 11: A commenter agreed that the fee increases are appropriate and licensing is a benefit, but stated there seems to be no enforcement or proof that enforcement exists. Licensure without enforcement is pointless.

RESPONSE 11: See Responses 7 and 10.

COMMENT 12: One commenter suggested that, with the fee increase, the state should request new photos for licenses and update the security manager license examination that was created in the 1960s and 1970s, because electronics have evolved greatly in the past ten years.

RESPONSE 12: Under ARM 24.182.403, the photograph must fairly and accurately represent the appearance of the licensee. If it does not, the board may require the submission of a new photo. The board could impose a requirement to update a photograph after a set interval; however, there would be a cost associated with that, which at this time, the board has determined is not prudent to require.

The board notes that the resident manager exam was last updated in 2009. Both before and after the revision, the exam consisted of only a laws and rules examination, and did not include any technical industry-specific information not otherwise covered in the applicable laws and rules.

4. The board has amended ARM 24.182.401 exactly as proposed.
5. The board did not adopt NEW RULES I through V as proposed.

BOARD OF PRIVATE SECURITY
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 November 14, 2011

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 32.2.404, 32.3.201, 32.3.224,	)	ADOPTION
32.3.224A, 32.3.401, 32.3.403,)	
32.5.101, 32.18.204, and the adoption)	
of New Rule I pertaining to department)	
livestock permit fees, miscellaneous)	
fees, definitions, bison, unlawfully)	
estrayed and 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)	

TO: All Concerned Persons

1. On August 11, 2011, the Department of Livestock published MAR Notice No. 32-11-217 regarding the proposed amendment and adoption of the above-stated rules at page 1464 of the 2011 Montana Administrative Register, issue number 15.

2. The Department of Livestock has amended the above-stated rules exactly as proposed.

3. The Department of Livestock has adopted New Rule I (32.18.207) exactly as proposed.

4. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

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

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

Certified to the Secretary of State November 14, 2011.

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

In the matter of the amendment of)
ARM 37.86.2803, 37.86.2907, and)
37.86.2925 pertaining to Medicaid)
inpatient hospital services)

NOTICE OF DECISION ON
PROPOSED RULE ACTIONS

TO: All Concerned Persons

1. On October 27, 2011 the Department of Public Health and Human Services published MAR Notice No. 37-566 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2241 of the 2011 Montana Administrative Register, Issue Number 20.

2. A public hearing on the notice of proposed amendment of the above-stated rules was held on November 16, 2011.

3. At this time, the department is not amending the proposed inpatient rules as filed in MAR 37-566. This action is necessary because the update to the APR Grouper was not received in time for the department to establish the proposed new hospital-base rates. A new proposed rule will be filed when the new rates can be calculated by the department.

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State November 14, 2011.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I (42.2.402) relating to issuing tax) CORRECTED NOTICE OF
certificates to LLCs following) ADOPTION
administrative dissolution)

TO: All Concerned Persons

1. On September 22, 2011, the department published MAR Notice No. 42-2-868 regarding a public hearing on the proposed adoption of the above-stated rule at page 1988 of the 2011 Montana Administrative Register, Issue No. 18. On November 10, 2011, the department published the notice of adoption at page 2425 of the 2011 Montana Administrative Register, Issue No. 21.

2. The reason for the correction is because the wrong chapter number was inadvertently assigned to the new rule and an implementing statute was cited twice. The corrected rule reads as follows:

NEW RULE I (42.2.402) TAX CERTIFICATES - REQUIREMENTS
(1) through (9) remain as adopted.

AUTH: 15-1-201, MCA

IMP: 15-31-524, 15-31-552, 35-1-994, 35-1-1037, 35-6-201, 35-8-912, 35-8-1010, ~~35-8-912~~, MCA

3. Replacement pages for the corrected notice of adoption will be submitted to the Secretary of State on December 30, 2011.

4. 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State November 14, 2011

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.10.331 pertaining to)
limitations on receipts from political)
committees to legislative candidates)

TO: All Concerned Persons

1. On August 11, 2011, the Commissioner of Political Practices published MAR Notice No. 44-2-170 pertaining to the proposed amendment of the above-stated rule at page 1539 of the 2011 Montana Administrative Register, Issue Number 15.

2. The commissioner has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ David B. Gallik
David B. Gallik
Commissioner of Political Practices

Certified to the Secretary of State November 10, 2011.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.10.338 pertaining to)
limitations on individual and political)
party contributions)

TO: All Concerned Persons

1. On August 11, 2011, the Commissioner of Political Practices published MAR Notice No. 44-2-171 pertaining to the proposed amendment of the above-stated rule at page 1542 of the 2011 Montana Administrative Register, Issue Number 15.

2. The commissioner has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ David B. Gallik
David B. Gallik
Commissioner of Political Practices

Certified to the Secretary of State November 10, 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 June 30, 2011. This table includes those rules adopted during the period July 1, 2011, through September 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 June 30, 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.

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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 October 2011 appear. Vacancies scheduled to appear from December 1, 2011, through February 29, 2012, 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 November 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 OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Athletic Trainers (Labor and Industry)			
Mr. Brian Coble Helena	Governor	reappointed	10/1/2011 10/1/2015
Qualifications (if required): athletic trainer (post-secondary school)			
Mr. Christopher Heard Butte	Governor	reappointed	10/1/2011 10/1/2015
Qualifications (if required): athletic trainer (health care facility)			
Dr. Derrick Johnson Butte	Governor	reappointed	10/1/2011 10/1/2015
Qualifications (if required): physician			
Board of Barbers and Cosmetologists (Labor and Industry)			
Ms. Darlene Battaiola Butte	Governor	Mace	10/20/2011 10/1/2016
Qualifications (if required): cosmetologist			
Ms. Juanita Mace Billings	Governor	Charles	10/20/2011 10/1/2016
Qualifications (if required): barber			
Board of Hearing Aid Dispensers (Labor and Industry)			
Ms. Rebecca Wisnoskie Helena	Governor	Michel	10/19/2011 7/1/2012
Qualifications (if required): hearing aid dispenser			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Medical Examiners (Labor and Industry)			
Dr. Anna Earl Chester Qualifications (if required): doctor of medicine	Governor	reappointed	10/19/2011 9/1/2014
Dr. Bruce Hayward McAllister Qualifications (if required): osteopath	Governor	Fink	10/19/2011 9/1/2014
Dr. Nathan Thomas Missoula Qualifications (if required): podiatrist	Governor	LaPan	10/19/2011 9/1/2014
Board of Nursing (Labor and Industry)			
Ms. Patsy Reece Rexford Qualifications (if required): licensed practical nurse	Governor	Dschaak	10/20/2011 7/1/2015
Ms. Laura Weiss Great Falls Qualifications (if required): registered nurse	Governor	reappointed	10/20/2011 7/1/2015
Board of Veterans' Affairs (Military Affairs)			
Mr. David E. Boyd Sr. Poplar Qualifications (if required): veteran and Tribal member	Governor	Rathey	10/24/2011 8/1/2015

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veterans' Affairs (Military Affairs) cont.			
Sen. Larry Jent Bozeman	Governor	Tropila	10/24/2011 8/1/2015
Qualifications (if required): representative of the State Administration and Veterans' Affairs Committee			
Mr. Travis Monroe Bozeman	Governor	Bell	10/24/2011 8/1/2015
Qualifications (if required): representative of Senator Max Baucus			
Ms. Anita Old Bull Big Man Billings	Governor	Jackson	10/24/2011 8/1/2015
Qualifications (if required): representative of Tribal governments			
Ms. Sarah Price Helena	Governor	English	10/24/2011 8/1/2015
Qualifications (if required): experience with veterans' issues			
Mr. Gary Sorensen Missoula	Governor	Crookshanks	10/24/2011 8/1/2015
Qualifications (if required): experience with veterans' issues			
Sen. Joe Tropila Great Falls	Governor	Pavlovich	10/24/2011 8/1/2015
Qualifications (if required): veteran-at-large			
Mr. Bill Willing Anaconda	Governor	Heffernan	10/24/2011 8/1/2015
Qualifications (if required): experience with veterans' issues			

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Claims Data Analysis Council (State Auditor)			
Mr. Jon Bennion Helena Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Ms. Jean Branscum Helena Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Mr. Frank Cote Helena Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Mr. Don Creveling Missoula Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Mr. Gregg Davis Missoula Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Rep. Chuck Hunter Helena Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Mr. Barnard Khomenko Missoula Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Claims Data Analysis Council (State Auditor) cont. State Auditor Monica J. Lindeen Huntley Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Mr. Todd Lovshin Helena Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Mr. Robert Shepard Clancy Qualifications (if required): none specified	State Auditor	not listed	10/13/2011 10/13/2013
Historical Preservation Review Board (Historical Society) Ms. Rosalyn LaPier Missoula Qualifications (if required): historical researcher	Governor	reappointed	10/19/2011 10/1/2014
Mr. Jeff Shelden Lewistown Qualifications (if required): historic architect	Governor	Hanna	10/19/2011 10/1/2014
Historical Records Advisory Council (Historical Society) Ms. Ellen Crain Butte Qualifications (if required): public representative	Governor	Pierson	10/12/2011 10/12/2013

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Historical Records Advisory Council (Historical Society) cont.			
Ms. Judy Ellinghausen Great Falls Qualifications (if required): public representative	Governor	reappointed	10/12/2011 10/12/2013
Ms. Jodie Foley Helena Qualifications (if required): state archivist	Governor	reappointed	10/12/2011 10/12/2013
Ms. Anne L. Foster Huntley Qualifications (if required): public representative	Governor	Gow	10/12/2011 10/12/2013
Mr. Jon Ille Hardin Qualifications (if required): public representative	Governor	reappointed	10/12/2011 10/12/2013
Mr. Samuel Meister Missoula Qualifications (if required): public representative	Governor	McCrea	10/12/2011 10/12/2013
Mr. Kim Allen Scott Bozeman Qualifications (if required): public representative	Governor	reappointed	10/12/2011 10/12/2013

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Human Rights Commission (Labor and Industry)			
Mr. Dustin J. Hankinson Missoula Qualifications (if required): public representative	Governor	Secher	10/20/2011 1/1/2013
Montana Arts Council (Arts Council)			
Mr. Allen Secher Whitefish Qualifications (if required): public representative	Governor	Ornitz	10/20/2011 2/1/2012
State Workforce Investment Board (Labor and Industry)			
Sen. Sherm Anderson Deer Lodge Qualifications (if required): private sector representative	Governor	Robinson	10/24/2011 7/1/2013
Mr. Evan Barrett Butte Qualifications (if required): Governor's representative	Governor	reappointed	10/24/2011 7/1/2013
Ms. Tina Bundtrock Great Falls Qualifications (if required): private sector representative	Governor	Paquette	10/24/2011 7/1/2013
Mr. John Cech Billings Qualifications (if required): public sector representative	Governor	Moe	10/24/2011 7/1/2013

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Investment Board (Labor and Industry) cont.			
Ms. Martina Copps Broadus Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. Dave Crum Great Falls Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. Thomas Curry Billings Qualifications (if required): labor representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. John DeMichiei Roundup Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. Michael DesRosier Browning Qualifications (if required): county commissioner	Governor	reappointed	10/24/2011 7/1/2013
Mr. Henry Dykema Red Lodge Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Commissioner Connie Eissinger Brockway Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Investment Board (Labor and Industry) cont.			
Mr. Mike Grove Helena Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. Kirk Hammerquist Kalispell Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Ms. Jacquie Helt Missoula Qualifications (if required): labor representative	Governor	reappointed	10/24/2011 7/1/2013
Ms. Vicki Judd Missoula Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Superintendent Denise Juneau Helena Qualifications (if required): public sector representative	Governor	reappointed	10/24/2011 7/1/2013
Director Keith Kelly Helena Qualifications (if required): veteran and a public sector representative	Governor	reappointed	10/24/2011 7/1/2013
Ms. Maureen Kenneally Butte Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Investment Board (Labor and Industry) cont.			
Mr. George Kipp Browning Qualifications (if required): section 166 representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. Nicholas Kujawa Butte Qualifications (if required): private sector representative	Governor	Sheridan	10/24/2011 7/1/2013
Mr. Michael McGinley Dillon Qualifications (if required): county commissioner	Governor	reappointed	10/24/2011 7/1/2013
Mr. Thomas McKenna Lewistown Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. Robert Miller Dillon Qualifications (if required): section 166 representative	Governor	reappointed	10/24/2011 7/1/2013
Mrs. Sandi Miller Helena Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. Jeff Rupp Bozeman Qualifications (if required): public sector representative	Governor	reappointed	10/24/2011 7/1/2013

BOARD AND COUNCIL APPOINTEES FROM OCTOBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Investment Board (Labor and Industry) cont.			
Director Dore Schwinden Helena Qualifications (if required): public sector representative	Governor	reappointed	10/24/2011 7/1/2013
Mr. Alan Skari Chester Qualifications (if required): private sector representative	Governor	reappointed	10/24/2011 7/1/2013
Ms. Anna Whiting-Sorrell Helena Qualifications (if required): public sector representative	Governor	reappointed	10/24/2011 7/1/2013
Ms. Linda Woods Darby Qualifications (if required): public sector representative	Governor	reappointed	10/24/2011 7/1/2013

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Alternative Livestock Advisory Council (Fish, Wildlife and Parks) Dr. Don Woerner, Laurel Qualifications (if required): veterinarian</p>	Governor	1/1/2012
<p>Mr. Stan Frasier, Helena Qualifications (if required): sportsperson</p>	Governor	1/1/2012
<p>Mr. James Bouma, Choteau Qualifications (if required): alternative livestock industry representative</p>	Governor	1/1/2012
<p>Board of Chiropractors (Labor and Industry) Dr. John Sando, Butte Qualifications (if required): practicing chiropractor with at least one year experience</p>	Governor	1/1/2012
<p>Ms. Alice Whiteman, Missoula Qualifications (if required): public representative</p>	Governor	1/1/2012
<p>Board of Horseracing (Livestock) Mr. Mike Tatsey, Valier Qualifications (if required): resident of District 3</p>	Governor	1/20/2012
<p>Mr. Cody Drew, Circle Qualifications (if required): resident of District 1</p>	Governor	1/20/2012
<p>Board of Occupational Therapy Practice (Labor and Industry) Ms. Amy J. Gilbertson, Great Falls Qualifications (if required): occupational therapist</p>	Governor	12/31/2011

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Personnel Appeals (Labor and Industry) Mr. Jack A. Holstrom, Helena Qualifications (if required): attorney with labor-management experience</p>	Governor	1/1/2012
<p>Board of Public Education (Education) Ms. Sharon Carroll, Ekalaka Qualifications (if required): resident of District 2 and she identifies herself as an Independent</p>	Governor	2/1/2012
<p>Board of Speech-Language Pathologists and Audiologists (Governor) Ms. Lynn Harris, Missoula Qualifications (if required): audiologist</p>	Governor	12/31/2011
<p>Ms. Tina Hoagland, Billings Qualifications (if required): audiologist</p>	Governor	12/31/2011
<p>Children's Trust Fund (Public Health and Human Services) Ms. Lori Brengle, Glendive Qualifications (if required): public representative</p>	Governor	1/1/2012
<p>Mr. Everall Fox, Billings Qualifications (if required): public representative</p>	Governor	1/1/2012
<p>Ms. Roberta Kipp, Browning Qualifications (if required): public representative</p>	Governor	1/1/2012
<p>Judicial Nomination Commission (Justice) Ms. Mona Charles, Kalispell Qualifications (if required): public representative</p>	Governor	1/1/2012

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Judicial Nomination Commission (Justice) cont. Mr. Andrew P. Suenram, Dillon Qualifications (if required): attorney actively engaged in the practice of law</p>	Supreme Court	12/31/2011
<p>Montana Alfalfa Seed Committee (Agriculture) Mr. Ernest Johnson, Chinook Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2011
<p>Mr. John Mehling, Hardin Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2011
<p>Mr. Marvin Frank, Joliet Qualifications (if required): alfalfa seed grower</p>	Governor	12/21/2011
<p>Montana Arts Council (Arts Council) Ms. Cynthia Andrus, Bozeman Qualifications (if required): public representative</p>	Governor	2/1/2012
<p>Ms. Judy Ulrich, Dillon Qualifications (if required): public representative</p>	Governor	2/1/2012
<p>Mr. Rick Newby, Helena Qualifications (if required): public representative</p>	Governor	2/1/2012
<p>Ms. Ellen Ornitz, Manhattan Qualifications (if required): public representative</p>	Governor	2/1/2012

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Montana Arts Council (Arts Council) cont. Ms. Jane Deschner, Billings Qualifications (if required): public representative</p>	Governor	2/1/2012
<p>Montana Council on Developmental Disabilities (Commerce) Dr. R. Timm Vogelsberg, Missoula Qualifications (if required): advocacy program representative</p>	Governor	1/1/2012
<p>Sen. Carol Williams, Missoula Qualifications (if required): legislator</p>	Governor	1/1/2012
<p>Ms. Diana Tavary, Helena Qualifications (if required): secondary consumer representative</p>	Governor	1/1/2012
<p>Mr. Roger Holt, Billings Qualifications (if required): advocacy program representative</p>	Governor	1/1/2012
<p>Rep. Tim Furey, Milltown Qualifications (if required): legislator</p>	Governor	1/1/2012
<p>Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Leo Solf, Winnett Qualifications (if required): grazing district director</p>	Governor	1/1/2012
<p>Mr. Alvin Windy Boy Sr., Box Elder Qualifications (if required): public representative</p>	Governor	1/1/2012

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Local Government Records Committee (Historical Society) Ms. Marcia Porter, Missoula Qualifications (if required): none specified	Director	12/31/2011
Ms. Martha Rehbein, Missoula Qualifications (if required): none specified	Director	12/31/2011
Montana Pulse Crop Advisory Committee (Agriculture) Ms. Kim Murray, Froid Qualifications (if required): none specified	Director	2/13/2012
Mr. Michael Ehlers, Oilmont Qualifications (if required): none specified	Director	2/13/2012
Mr. Jon Stoner, Havre Qualifications (if required): none specified	Director	2/13/2012
Small Business Health Insurance Pool Board (State Auditor) Ms. Connie Welsh, Helena Qualifications (if required): management level individual with knowledge of state employee health benefit plans	Governor	1/1/2012
Mr. John Thomas, Helena Qualifications (if required): management-level individual with knowledge of state employee health benefit plans	Governor	1/1/2012
Statewide Independent Living Council (Public Health and Human Services) Ms. Evelyn Pool, Lincoln Qualifications (if required): public representative	Governor	12/1/2011

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Traumatic Brain Injury Advisory Council (Public Health and Human Services)		
Ms. Julia Hammerquist, Kalispell Qualifications (if required): brain injury survivor	Governor	1/1/2012
Ms. Cindi Laukes, Missoula Qualifications (if required): representative of an injury control or prevention program	Governor	1/1/2012
Youth Justice Council (Justice)		
Rep. Rosalie "Rosie" Buzzas, Missoula Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Judge Pedro Hernandez, Billings Qualifications (if required): representative of law enforcement	Governor	2/9/2012
Mr. Ted Lechner, Billings Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Mr. Richard T. Montgomery, Helena Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Ms. Katie Yother Champion, Bozeman Qualifications (if required): youth representative	Governor	2/9/2012
Ms. Joy Mariska, Billings Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Ms. Jennifer Kistler, Missoula Qualifications (if required): youth representative	Governor	2/9/2012

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont.		
Mr. Dale Four Bear, Poplar Qualifications (if required): competency in addressing problems facing youth	Governor	2/9/2012
Mayor Pamela B. Kennedy, Kalispell Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Mr. Wayne Stanford, Stevensville Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Ms. Pamela A. Hillery, Havre Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Ms. Penny Kipp, Pablo Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Ms. Donna Falls Down, Hardin Qualifications (if required): representative of law enforcement	Governor	2/9/2012
Mr. Glen Granger, Butte Qualifications (if required): representative of law enforcement	Governor	2/9/2012
Mr. Tim Brurud, Havre Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Mr. Larry Dunham, Condon Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012

VACANCIES ON BOARDS AND COUNCILS -- DECEMBER 1, 2011 THROUGH FEBRUARY 29, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Mr. Matt Thompson, Helena Qualifications (if required): having competency in addressing problems facing youth	Governor	2/9/2012
Mr. Donald Cox Jr., Havre Qualifications (if required): youth representative	Governor	2/9/2012
Mr. Spencer Love, Helena Qualifications (if required): youth representative	Governor	2/9/2012