

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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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(6) The amount of time necessary for an inspection is determined both by factors listed in [NEW RULE III].

AUTH: 80-7-108, MCA

IMP: 80-7-108, MCA

NEW RULE II NURSERY RISK FACTORS (1) The department shall determine each nursery's risk based on the following factors:

- (a) origin or source of nursery stock;
- (b) distribution of nursery stock;
- (c) sales of regulated nursery stock;
- (d) quarantine or other regulated areas, including quarantine violations;
- (e) compliance history; and
- (f) complaints.

AUTH: 80-7-108, MCA

IMP: 80-7-108, MCA

NEW RULE III LENGTH OF INSPECTIONS (1) Length of inspection will be based on the following factors:

- (a) size and type of operation;
- (b) variety of plant material;
- (c) import/export activity;
- (d) presence of prohibited material or organisms; and
- (e) violations of law or rule.

AUTH: 80-7-108, MCA

IMP: 80-7-108, MCA

NEW RULE IV COST OF INSPECTIONS (1) The hourly charge for nursery inspections is \$44, with a half-hour minimum.

AUTH: 80-7-108, MCA

IMP: 80-7-108, MCA

NEW RULE V CONTESTED RISK CATEGORY (1) If a nursery business disagrees with the department's assessment of the risk posed by the business, the business may request a change of classification from the director of the department by explaining in writing the reason they want to be changed. It is up to the director whether such changes will be granted.

AUTH: 80-7-108, MCA

IMP: 80-7-108, MCA

NEW RULE VI FEDERAL FEES OR CHARGES (1) If the department provides a service, permit, license, or inspection that has a federal fee, the department may collect the federal fee from the person requesting the service,

permit, license, or inspection unless they have already made other arrangement for paying the fee.

AUTH: 80-7-108, 80-7-122, MCA

IMP: 80-7-108, 80-7-122, MCA

REASON AND FINANCIAL IMPACT: The goal of the MDA nursery inspection program is to mitigate the plant pest risk associated with the movement of nursery stock. This risk includes the movement of nursery stock into Montana and the risk that movement poses not only to the nursery industry but also to agriculture, forest products, and urban and forest landscape. Invasive pests that can be moved through nursery stock cause billions of dollars of damage across the United States annually. A single invasive species, the emerald ash borer, is estimated to cost individual communities tens of millions of dollars and the entire infested area over \$10 billion in the next decade (Kovacs, et al. 2009). The 2011 Legislature directed the department to promulgate administrative rules to implement the statute changes that include establishing a schedule of inspections, expected length of time an inspection may take, and outlining a risk-based approach to inspections.

Licensing fees were eliminated for nurseries with gross annual sales of less than \$1,000. The department has authority to enter and inspect licensed nurseries, pursuant to 80-7-108(a), MCA. Based on this, the department will not inspect unlicensed nurseries; therefore, there will be no economic impact unless the unlicensed nursery requests an inspection. Requested inspection will be focused on the need of the nursery, which will drive the amount of inspection time, and therefore, the cost of the inspection. Requested inspection will use the same cost development as licensed nursery inspections. Inspection costs are hourly wage based. Low risk nurseries, who are inspected every two years and which may take up to two hours for an inspection, may expect an inspection bill of \$88 (\$44 x 2 hours). Medium risk nurseries, who are inspected every three years and may take up to three hours for an inspection, may expect an inspection bill of \$132. For both low and medium risk nurseries, the annualized cost is expected to be \$44. A high risk nursery has the most extensive range of time allotted for an inspection, between two and eight hours. The maximum anticipated inspection cost is estimated at \$352 a year. Inspection costs do not include necessary travel or other costs that might be needed to cover trapping, treatments, or other incidentals.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-5402; fax: (406) 444-5409; or e-mail: agr@mt.gov and must be received no later than February 23, 2012.

5. The Department of Agriculture maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name, e-mail, and mailing address of the person and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been met. The primary bill sponsors, Taylor Brown and Cliff Larsen, were contacted by e-mail and phone on January 10, 2012.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, January 17, 2012.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
4.12.1405, 4.12.1427, 4.12.1428,)
4.17.105, 4.17.106, and 4.17.107 relating)
to the Late Fees for Services)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 16, 2012, at 3:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-5402; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

REASON: For all the rules that are amended here the reasoning for the amendments is the same. Establishing and clarifying that payment for services is due upon receipt is important for timely processing of accounts payables. Establishing and clarifying when accounts are past due is necessary for imposing collection fees. Establishing this timeframe allows the department to determine which accounts have been paid in full before generating the next month's bills. The minimum fee is not being increased to generate revenue, but to cover associated costs when bills are not paid on time and department staff is required to spend additional hours processing additional bills.

4.12.1405 PLANT INSPECTION CERTIFICATE/SURVEY COSTS – FEES

~~(1) All fees are due within 30 days after billing. The department may assess a collection fee of 10% of any amount past due, after providing written notice of the past due status, with a minimum charge of \$10. All fees for services are payable upon receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate, or assess a minimum fee of \$25, whichever is greater, for any payment amount not received on or before the last regular business day of each month.~~ The department may require past due payment of fees prior to providing inspection services. The fees shall be as follows:

(a) through (d) remain the same.

AUTH: 80-1-102, ~~80-7-108~~, ~~80-7-122~~ ~~80-7-131~~, MCA
IMP: 80-7-108, 80-7-110, ~~80-7-119~~ 80-7-122, MCA

FINANCIAL IMPACT: The impact cannot be accurately estimated since collection fees will be based on each client's fee balance. By way of example, though, if a client owed fees in the amount of \$500 that were more than 30 days old, under the current collection fee rule (10% or \$10, whichever is greater), the collection fee for that month would be \$50 (10% = .10; \$500 x .10 = \$50). Under the proposed fee collection change, that same client would owe \$25 (18% APR is 0.18; 0.18/12 months = .015 x \$500 = \$7.50 but since \$7.50 is less than \$25, \$25 would be used). Under the current collection fee rule, collection fees older than 30 days are assessed on a monthly basis. Under the proposed rule, for this client, the economic impact would be a reduction in that month's collection fee of \$25.00. Collection fees can be avoided by paying fees when due.

4.12.1427 INSPECTION FEES (1) through (4) remain the same.

(5) ~~All fees are due within 30 days after billing for services are payable upon receipt of a billing statement.~~ The department may assess a collection fee of 18% annual percentage rate ~~of any amount past due~~, or assess a minimum charge fee of \$10 \$25, whichever is greater, for any payment amount not received on or before the last regular business day of each month. The department may require ~~past due~~ payment of fees prior to providing inspection services.

AUTH: 80-3-303, 80-3-315, MCA
IMP: 80-3-315, MCA

FINANCIAL IMPACT: Historically, the department has provided inspection services to less than sixty businesses in the state of Montana. Under the current fee structure, the department has issued the minimum \$10 fee to two businesses for late payment of inspection fees. In the past two years, the minimum late fee was assessed eighteen times to these businesses for a total of \$180. Using the proposed minimum fee for late payments, the two businesses would have been assessed a total of \$450 for an increased financial impact of \$270. Collection fees can be avoided by paying inspection fees when due.

4.12.1428 ASSESSMENT FEES ON ALL PRODUCE (1) The assessment fee on all produce except produce grown in Montana and inspected at shipping point shall be 6 cents per each produce unit.

(a) The department may assess a 10% penalty (based on the previous quarterly assessment report fee amount), or a minimum fee of \$25, whichever is greater, for any assessment reports received after the deadline.

AUTH: 80-3-303, 80-3-314, MCA
IMP: 80-3-314, MCA

FINANCIAL IMPACT: The department has 35 companies submitting quarterly produce assessment reports. On average, five companies fail to meet the deadline for submitting their reports each quarter. The 35 companies paid an average quarterly assessment of \$3,200 for the previous three years. Using the three-year average, the financial impact would be \$320 per company per quarter. The total annual impact would be \$6,400 (5 companies x \$320 per quarter x 4 quarterly periods = \$6,400). Collection fees can be avoided by submitting reports and paying assessment fees when due.

4.17.105 APPLICATION PROCEDURES (1) through (8) remain the same.

~~(9) Applications are due by the following deadlines. Applications submitted after the deadline must include an additional late fee of \$200.~~

~~(a)~~ Applications for initial certification of producers are due at least 120 days prior to the harvest of organic crops or the sale of organic livestock or livestock products.

~~(b)~~(a) Applications to continue producer certification are due no later than March 15 annually.

~~(c)~~(b) Applications for initial certification of handlers can be made at any time.

~~(d)~~(c) Applications to continue handler certification are due no later than September 15 annually.

(10) through (11) remain the same.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON AND FINANCIAL IMPACT: See ARM 4.17.106 below.

4.17.106 APPLICATION FEES AND FEES FOR SERVICES (1) through (6) remain the same.

~~(7) Inspection fees are due no later than 30 days past billing. The department shall assess a collection fee of 18% annual percentage rate for any amount past due. The department may require past due payment of fees prior to providing certification services. Applications submitted after the deadline must include an additional late fee of \$200.~~

(a) Application fees and the related \$200 late fee are subject to a collection fee of 18% annual percentage rate or a minimum fee of \$25, whichever is greater, for any payment amount not received within 45 days of the deadline and for each monthly billing cycle thereafter.

(8) Inspection fees are payable upon receipt of a billing statement. The department may assess a collection fee of 18% annual percentage rate or assess a minimum fee of \$25, whichever is greater, for any payment amount not received on or before the last regular business day of each month. The department may require past due payment of fees prior to providing certification services.

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON AND FINANCIAL IMPACT: The line that indicated a \$200 late fee was moved from ARM 4.17.105(9), which discussed procedures, and added to ARM 4.17.106(7), which discusses fees, for consistent topic matter. Section (7)(a) is required to clarify that the \$200 late fee is subject to the collection fee, but not until after a one-month billing cycle.

Over the past five years, approximately 15 percent of certified operations have paid (annual) application fees after the due date. Fifteen percent of currently certified operations is 21. Assuming an average application fee of \$300, and the \$200 late fee, collection fees on late applications have historically generated an estimated \$157.50 (21 late applications x \$500 x 18% APR x 30 days) or \$7.50 per late application. Using the proposed \$25 minimum fee, the estimated collection fees received would be \$525 (21 late applications x \$25) for a fiscal impact of \$367.50. Collection fees can be avoided by paying application and inspection fees when due.

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

(a) the annual report of all gross sales and handling charges shall be for the previous calendar year;

(b) the report and fees for both producers and handlers are due on March 15 annually. The department may assess a 10% penalty (based on the previous annual assessment report fee amount), or a minimum fee of \$25, whichever is greater, for any assessment reports received after the deadline. The department may require past due payment of fees prior to providing certification services.

(2) remains the same.

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

AUTH: 80-11-601, MCA

IMP: 80-11-601, MCA

REASON AND FINANCIAL IMPACT: Over the past five years, approximately 10% of certified operations have submitted annual sales reports and/or assessment fees after the due date. Ten percent of currently certified operations is 14. Assuming an average assessment fee of \$500, penalties for late sales reports are estimated to generate \$700 (14 late assessments x \$500 x 10%). The total annual fiscal impact is estimated at \$700.

Collection fees can be avoided by submitting reports and paying assessment fees when due.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-5402; fax: (406) 444-5409; or e-mail: agr@mt.gov and must be received no later than February 23, 2012.

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

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

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, January 17, 2012.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
4.12.1024 and 4.12.1025 relating to the) PROPOSED AMENDMENT
Commodity Warehouses)

TO: All Concerned Persons

1. On February 16, 2012, at 4:30 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-5402; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.12.1024 LICENSE FEES FOR COMMODITY DEALERS AND PUBLIC WAREHOUSES (1) The annual licensing fee for each person engaged in the business of a commodity dealer is \$464 per facility and for each person operating a public warehouse, the fee is \$464 per location.

(2) A warehouse license is not required if the activities that would trigger the need for the license are completed for any customer within 72 hours of receiving the commodity, the commodity is returned to the original producer, and the business carries at least \$50,000 in insurance covering the goods of its customers.

AUTH: 80-4-403, MCA
IMP: 80-4-503, 80-4-602, MCA

REASON AND FINANCIAL IMPACT: This is a clarification in rule representing the current understanding of what a public warehouse was meant to be, and as such reflects the past behavior of the department. This rule merely makes clear the bright line between who is and isn't a public warehouse and notes that all service providers not just seed cleaners can be public warehouses if they retain possession of commodities for longer than 72 hours. There is no financial impact.

4.12.1025 AGRICULTURAL SEED WAREHOUSE RECEIPTS - WRITTEN

TERMS (1) The public agricultural seed warehousemen shall each day, issue a warehouse receipt for each lot of agricultural seed of one kind received. Agricultural seed of one kind received from one owner during any one day may be construed to be a single lot. ~~If seed is received solely for cleaning and not to be held longer than 24 hours; the warehouseman is not required to issue a warehouse receipt.~~ If seed is received for storage or cleaning and storage, a warehouse receipt shall be issued.

(2) Public agricultural warehouse storage rules and statutes shall apply to all other aspects of agricultural seed warehousing.

AUTH: 80-4-403, MCA

IMP: 80-4-527, MCA

REASON AND FINANCIAL IMPACT: Given the amendment to the rule above this line was redundant with the previous amended rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-5402; fax: (406) 444-5409; or e-mail: agr@mt.gov and must be received no later than February 23, 2012.

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

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

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, January 17, 2012.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
4.12.1301, 4.12.1302, 4.12.1303,) PROPOSED AMENDMENT
4.12.1305, and 4.12.1307 relating to the)
Quarantine Program)

TO: All Concerned Persons

1. On February 16, 2012, at 2:00 p.m. the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 302 N. Roberts at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on February 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; phone: (406) 444-5402; fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.12.1301 DEFINITIONS (1) through (16) remain the same.

(17) "Regulated article" is any plant, plant matter, propagative plant parts, plant products, associated plant material, container, conveyance, or any other object or material capable of harboring or spreading plant pests, and that is subject to phytosanitary measures or a quarantine.

(18) "Short-term quarantine" is a quarantine that lasts 12 months or less.

(19) "Vector" is an organism that transmits a pathogen.

AUTH: 80-7-402, MCA

IMP: 80-7-402, MCA

REASON AND FINANCIAL IMPACT: Provides consistency within administrative rules when referencing regulated articles. There is no economic impact associated with this change.

4.12.1302 ESTABLISHING A QUARANTINE (1) and (2) remain the same.

(3) A list of quarantines is available by contacting: Montana Department of Agriculture, Agricultural Sciences Division, ~~303~~ 302 N. Roberts, P.O. Box 200201, Helena, MT 59620-0201; fax: (406) 444-7336; e-mail: agr@mt.gov, or through the department's web site: www.agr.mt.gov.

AUTH: 80-7-402, MCA
IMP: 80-7-402, MCA

REASON AND FINANCIAL IMPACT: During the past year, the address for the department was adjusted; this change updates contact information for the department. This is a housekeeping change. There is no associated economic impact.

4.12.1303 NOTIFICATION OF IMPORTS (1) remains the same.

(2) The department must be in receipt of all proper documents at least 48 business hours before bringing the items into the state. Business hours are Monday through Friday, 8:00 a.m. to 5:00 p.m., MST, excluding state holidays.

(3) and (4) remain the same.

AUTH: 80-7-402, MCA
IMP: 80-7-402, MCA

REASON AND FINANCIAL IMPACT: Provides clarification that the department's normal operating hours are mountain standard time; represents housekeeping change. There is no economic impact associated with this change.

4.12.1305 INSPECTIONS (1) The department may inspect at any time, without notice, any business, location, conveyance, or records relating to such a business, location, or conveyance of:

(a) Any individual, business, distributor, or shipper that sends ~~them~~ a notice of import and the receiver of such imports.

(b) Any permit holder or anyone who has had a permit in the previous 24 months.

(c) Any person involved in the import or export of any plant, plant matter, plant part, plant product, or other regulated article subject to a quarantine.

(d) Any location that has, grows, propagates, processes, distributes, sells, trades, barter, uses, or gives away a plant, plant matter, plant part, or plant product subject to a quarantine.

(2) through (4) remain the same.

AUTH: 80-7-402, MCA
IMP: 80-7-402, MCA

REASON AND FINANCIAL IMPACT: The use of "them" is extraneous and unnecessary; represents housekeeping change. There is no associated economic impact.

4.12.1307 VIOLATIONS AND PENALTIES

(1) Violation Schedule	1st Offense	Subsequent Offense
------------------------	----------------	-----------------------

(a) Selling, distributing,

<u>propagating, rearing, planting, releasing, moving, or transporting a regulated article without a permit or compliance agreement.</u>	<u>\$2,500</u>	<u>\$5,000</u>
(a) (b) Knowingly bringing plants, plant matter, propagative plant parts, plant products, or any associated material into the state that is diseased, infected, or infested whether it is quarantined or not.	\$1,000 <u>\$2,500</u>	\$1,000 <u>\$5,000</u>
(b) (c) Bringing a quarantined regulated article into the state without a required permit.	\$750 <u>\$2,500</u>	\$1,000 <u>\$5,000</u>
(c) (d) Failure to obtain a permit.	\$500 <u>\$1,000</u>	\$1,000 <u>\$5,000</u>
(d) (e) Failure to have a required permit or other required document with a quarantined item.	\$500 <u>\$1,000</u>	\$1,000 <u>\$5,000</u>
(e) (f) Failure to provide required notification.	\$500 <u>\$1,000</u>	\$1,000 <u>\$5,000</u>
(f) (g) Failure to follow any required safeguard <u>not resulting in harm.</u>	\$500 <u>\$1,000</u>	\$1,000 <u>\$5,000</u>
(h) <u>Failure to follow any required safeguard that resulted in harm.</u>	<u>\$2,500</u>	<u>\$5,000</u>
(g) (i) Failure to keep required records.	\$500 <u>\$1,000</u>	\$1,000 <u>\$5,000</u>
(h) (j) Failure to release or allow access to records pertaining to a quarantine, order, permit, or compliance agreement.	\$500 <u>\$2,500</u>	\$1,000 <u>\$5,000</u>
(i) (k) Falsifying any record or document related to a quarantine, order, permit, or compliance agreement, including, but not limited to all sales, handling, shipping, transporting, importing, and exporting and any invoice, bill of lading, permit, seal, or certificate.	\$1,000 <u>\$2,500</u>	\$1,000 <u>\$5,000</u>
(j) (l) Interfering with or preventing an inspection or investigation.	\$1,000 <u>\$2,500</u>	\$1,000 <u>\$5,000</u>
(k) (m) Failure to be in compliance with a quarantine requirement.	\$1,000 <u>\$2,500</u>	\$1,000 <u>\$5,000</u>
(l) (n) Noncompliance with any state or federal quarantine, order, permit condition or requirement, or compliance agreement <u>that did not cause harm.</u>	\$1,000 <u>\$2,500</u>	\$1,000 <u>\$5,000</u>
(o) <u>Noncompliance with any state or federal quarantine, order, permit condition or requirement, or compliance agreement that caused harm.</u>	<u>\$5,000</u>	<u>\$5,000</u>

<p>(m) (p) Any other violation of the Quarantine Act or these rules <u>that did not cause harm.</u></p>	<p>\$1,000 <u>\$2,500</u></p>	<p>\$1,000 <u>\$5,000</u></p>
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<p>(q) Any other violation of the Quarantine Act or these rules <u>that caused harm.</u></p>	<p><u>\$5,000</u></p>	<p><u>\$5,000</u></p>
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(2) and (3) remain the same.

(4) At the department's discretion, each continued day of violation can be a separate offense.

AUTH: 80-7-402, MCA

IMP: 80-7-402, MCA

REASON AND FINANCIAL IMPACT: The original matrix covered regulated articles under a quarantine being brought into the state but not movement or spread of regulated articles within the state. An additional violation was added to reflect the movement and spread of regulated articles within the state. During the 2011 legislative session, the civil penalty maximum was increased to \$5,000 to ensure that penalties represented a true deterrent. The civil penalty matrix values have been adjusted pursuant to recommendation of the potato improvement association, who requested the change legislatively. Changes were also made to reflect whether harm resulted from a violation. Additional language was added to clarify that penalties may accrue on a daily basis. There is an economic impact associated with the changes in this section. In most cases, the changes significantly increase penalties associated with listed violations. The department has addressed three violations of the Quarantine Act in the past two years. No civil penalties were assessed because the department was able to effectively address them through compliance assistance and a warning letter. In both cases, there was no harm intended or realized. Penalties, however, are avoidable by not violating quarantine requirements.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Cort Jensen at the Montana Department of Agriculture, 302 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; telephone (406) 444-5402; fax: (406) 444-5409; or e-mail: agr@mt.gov and must be received no later than February 23, 2012.

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

may be made by completing a request form at any rules hearing held by the Department of Agriculture.

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

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been met. The primary bill sponsor, Bruce Tutvedt, was contacted by e-mail and phone on January 11, 2012.

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, January 17, 2012.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.87.1303, 37.87.1307,) PROPOSED AMENDMENT
37.87.1321, and 37.87.1333)
pertaining to home and community-)
based services (waiver) for youth with)
serious emotional disturbance)

TO: All Concerned Persons

1. On February 15, 2012, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 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 February 8, 2012, 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:

37.87.1303 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: FEDERAL AUTHORIZATION AND AUTHORITY OF STATE TO ADMINISTER PROGRAM (1) through (4) remain the same.

(5) In the service areas specified in (4) of this rule, no more than a total of 100 youth per waiver year for all core sites may be enrolled at any given time. A waiver year begins on October 1st and ends on September 30th.

(a) When a waiting list is established in any of the core sites, the protocol defined in the Psychiatric Residential Treatment Facility Home and Community Based Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October ~~2010~~ 2011 will be used by the department to reallocate unused service opportunities.

(6) remains the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA
IMP: 53-6-402, MCA

37.87.1307 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: LOSS OF A SERVICE AND DISENROLLMENT (1) A service available through the program may be denied to a youth for the following reasons:

(a) through (c) remain the same.

(d) the financial costs and other impacts on the program due to the delivery of the service to the youth do not conform with the plan of care requirements in accordance with the Psychiatric Residential Treatment Facility Home and Community Based Services Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October ~~2010~~ 2011.

(2) remains the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

37.87.1321 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: THE PROVISION OF SERVICES

(1) and (2) remain the same.

(3) The following services, defined ~~and incorporated by reference~~ in the Psychiatric Residential Treatment Facility Home and Community Based Services Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October ~~2010~~ 2011, adopted and incorporated by reference in ARM 37.87.1333, may be provided through the program:

(a) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

37.87.1333 HOME AND COMMUNITY-BASED SERVICES FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: REIMBURSEMENT (1) remains the same.

(2) Program services are reimbursed at the lower of the following:

(a) the provider's usual and customary charge for the services; or

(b) the fees stated in Appendix A with an effective date of ~~August~~ October 1, 2011 and December 1, 2011 contained in the program's Psychiatric Residential Treatment Facility Home and Community-Based Services Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October ~~2010~~ 2011. The department adopts and incorporates by reference the provider policy manual which may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 North Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(3) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, 53-6-402, MCA

IMP: 53-6-402, MCA

4. STATEMENT OF REASONABLE NECESSITY

Amendments Approved by the Centers for Medicare and Medicaid Services

The department proposes to update the following rules by incorporating by reference the most current version of the Psychiatric Residential Treatment Facility Home and Community-Based Services Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October 2011: ARM 37.87.1303, 37.87.1307, 37.87.1321, and 37.87.1333.

The department recently received approval from the Centers for Medicare and Medicaid Services (CMS) to amend the 1915(c) Home and Community-Based Services PRTF Waiver for Youth with Serious Emotional Disturbance (SED). This amendment included two changes:

- a. Change the provider qualification for a Family Support Specialist (FSS) to include that the FSS must either have a bachelor's degree in human services or have a minimum of three years direct experience (as documented by the agency) working with youth with SED. The agency that provides FSS services must ensure that the FSSs receive clinical supervision; and
- b. change the unit of service for Education and Support Services from "per series (package)" to "per session."

The changes listed above do not have a negative impact on the youth and families served under the PRTF Waiver or the providers of FSS services.

The proposed amendments are necessary for an accurate reflection of the most up-to-date policy manual which contains the amendments to the waiver as approved by CMS [provider qualification change for a Family Support Specialist (FSS) and the unit of service change for Education and Support Services]. By having the information in the manual, providers will be more familiar with these changes. The proposed amendments allow agencies the opportunity to provide FSS services by staff that either have a bachelor's degree in human services or have a minimum of three years direct experience (as documented by the agency) working with youth with SED (the agency that provides FSS services must ensure that the FSSs receive clinical supervision). This will be helpful in areas where the Waiver is operational and there are staff shortages due to the previous requirement that a bachelor's degree in human services was necessary. In addition, proposing to change the unit of service for Education and Support Services from "per series (package)" to "per session" will increase the provider's capacity to provide the service. Previously, providers were reluctant to deliver the service due to the limitation of providing a per series package at a low rate of reimbursement.

The department chose this approach to avoid any confusion for providers of waiver services. Without describing the two changes approved by CMS, providers would not be familiar with the proposed amendments to Family Support Specialist services

and/or Education and Support Services. Youth enrolled in the Waiver program may have gone without the services as the providers would not have been informed, without the most current version of the provider manual.

The department is taking this opportunity to rephrase cumbersome language in ARM 37.87.1321(3) referring to adoption of the Psychiatric Residential Treatment Facility Home and Community-Based Services Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual. No substantive change, other than the policy manual update, is intended.

Fiscal Impact

There is no anticipated fiscal impact from these rules. The change in the unit definition is not anticipated to substantially increase or decrease waiver expenditures; it is anticipated to increase access to the services and remain within the federally approved waiver projections. Use of any particular waiver service is governed by the need of the individual youth being served.

Persons and Providers Affected

At capacity, 100 youth may be enrolled in the waiver at any given time; the cost of the waiver must be less than or equal to the cost of serving the youth in a PRTF facility. The number of persons affected: 100 youth at any given time in the counties where waiver enrollment is available. There are approximately 61 enrolled waiver providers in Montana who would be affected.

Proposed Amendment to the Centers for Medicare and Medicaid Services

The department proposes to update ARM 37.87.1333 by incorporating by reference the most current version of the Psychiatric Residential Treatment Facility Home and Community-Based Services Waiver for Youth with Serious Emotional Disturbance Provider Policy Manual dated October 2011; Appendix A, Service Codes and Reimbursement- Effective December 1, 2011.

The department will be submitting to the CMS an amendment to the 1915(c) Home and Community-Based Services PRTF Waiver for Youth with Serious Emotional Disturbance. This amendment includes two changes, reflected in the policy manual:

- a. An increase in the rate of reimbursement for the Caregiver Peer-to-Peer Specialist to \$10.50 per unit of service; a unit of service is defined as 15 minutes. Additionally, the Caregiver Peer-to-Peer Specialist will bill the 15-minute unit when attending meetings. This change will incentivize providers to participate in the program.
- b. A change to language in the waiver document allowing for the plan manager position to be contracted. The current language states the plan manager is an employee of the Department of Public Health and Human Services.

The changes listed above do not have a negative impact on the youth and families served under the PRTF Waiver or the providers of services.

The proposed amendments are necessary to accurately reflect the most up-to-date policy manual which contains the amendments and pending amendments to the Waiver. By having the information in the manual, providers will be familiar with these changes. The proposed amendment will allow agencies the opportunity to provide Caregiver Peer-to-Peer Specialist services; the previous rate was too low for agencies to hire staff. The policy manual further clarifies that the Plan Manager position may be contracted through an entity within the community. The department is proposing to update the current version of the provider manual to avoid any confusion for providers of waiver services pertaining to such policy. Providers would not be familiar with the details of the increased rate for the Caregiver Peer-to-Peer Specialist service without a rule change and fee schedule update. The increase in the rate was proposed by providers as the previous rate was too low to hire Caregiver Peer-to-Peer Specialists. Youth enrolled in the Waiver program may have gone without the services as the providers would not have been informed, without the most current version of the provider manual.

Potential Fiscal Impact

Anticipated fiscal impact from the increase in the unit rate (and discontinuation of the meeting rate) is approximately \$306,950 per year.

Persons and Providers Potentially Affected

At capacity, 100 youth may be enrolled in the waiver at any given time; the cost of the waiver must be less than or equal to the cost of serving the youth in a PRTF facility. The number of persons affected: 100 youth at any given time in the waiver in the counties where waiver enrollment is available. There are approximately 61 enrolled waiver providers in Montana who could also be affected.

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., February 23, 2012.

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State January 17, 2012.

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,)
37.86.2918, and 37.86.2925)
pertaining to Medicaid inpatient)
hospital services)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On February 15, 2012, at 9:30 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 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 February 8, 2012, 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:

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants. ~~Such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15 Transmittal 21 last updated January 2010, subject to the exceptions and limitations provided in the department's administrative rules.~~

(a) The department adopts and incorporates by reference ~~Pub.~~ CMS Publication 15, which is a manual published by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), which provides guidelines and policies to implement Medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of ~~Pub.~~ CMS Publication 15 may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(b) For cost report periods occurring on or after May 1, 2010, such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15, Form 2552-10, Transmittal 2, last updated August 2011, subject to the exceptions and limitations provided in the department's administrative rules.

(c) For cost report periods occurring prior to May 1, 2010, such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15, Form 2552-96, Transmittal 25, last updated April 2011, subject to the exceptions and limitations provided in the department's administrative rules.

~~(a)~~ (d) For cost report periods ending on or after January 1, 2006, for each hospital which is a critical access hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient and outpatient hospital services shall be limited to 101% of allowable costs, as determined in accordance with (1).

(2) and (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

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

~~(a) Effective July 1st of each year, t~~The department will assign an APR-DRG to each Medicaid client discharge in accordance with the current APR-grouper program version, as developed by 3M Health Information Systems. The assignment and reimbursement of each APR-DRG is based on:

(i) through (1)(b) remain the same.

(c) The department computes a Montana average base price per case. This base price includes in-state and out-of-state distinct part rehabilitation units and long term care (LTC) facilities. ~~Effective August 1, 2011~~ April 1, 2012 the average base price, including capital expenses, is ~~\$4,429~~ \$4,630. Disproportionate share payments are not included in this price.

(i) The average base price for Center of Excellence hospitals, including capital expenses, is ~~\$6,890~~ \$7,725. Disproportionate share payments are not included in this price.

(d) and (e) remain the same.

(2) The Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), ~~and outlier thresholds, and APR grouper version 29~~ are contained in the APR-DRG Table of Weights and Thresholds (effective ~~July 4, 2010~~ April 1, 2012) published by the department. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds (effective ~~July 4, 2010~~ April 1, 2012). Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

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

37.86.2918 INPATIENT HOSPITAL, READMISSIONS, PARTIAL ELIGIBILITY, OUTPATIENT BUNDLING, AND TRANSFERS FOR PROSPECTIVE PAYMENT SYSTEM (PPS) FACILITIES (1) and (2) remain the same.

(3) Outpatient hospital services, including provider-based entity hospital outpatient services, emergency room services, and diagnostics services (including clinical diagnostic laboratory tests) that are provided by an entity owned or operated by the hospital and occur the day of or the day before the inpatient hospital admission are deemed to be inpatient services and must be bundled into the inpatient claim.

(4) remains the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

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

37.86.2925 INPATIENT HOSPITAL REIMBURSEMENT, DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS (1) and (2) remain the same.

(3) Disproportionate share hospital payments, including routine disproportionate share hospital payments and supplemental disproportionate share hospital payments will be limited to the cap established by the federal Centers for Medicare and Medicaid Services (CMS) for the state of Montana. The adjustment percentages specified in this rule shall be ratably reduced as determined necessary by the department to avoid exceeding the cap.

(a) The department will submit an independent certified audit to CMS for each completed Medicaid state plan rate year, consistent with 42 CFR Part 455, Subpart D.

(b) To the extent that audit findings demonstrate that DSH payments exceed the documented hospital-specific limits, the department will collect overpayments and redistribute DSH payments.

(c) Beginning with state fiscal year (SFY) 2011, based on audit findings, should the department determine that there is an overpayment to a provider, the department will:

(i) recover the overpayment from the provider;

(ii) redistribute the amount in overpayment to providers that had not exceeded the hospital-specific limit during the period in which the DSH payments were determined; and

(iii) ensure all payments will be subject to hospital-specific limits.

(d) Should the DSH overpayment exceed the aggregate hospital-specific limit, the federal amount of overpayment will be returned to the Center for Medicare and Medicaid Services (CMS).

(e) Beginning with SFY 2011, facilities choosing not to participate in the annual DSH audit will forfeit 100% of their DSH payment allocated for that year. This allocation will be deemed an overpayment and will be recovered from the provider.

(f) Disproportionate share payments must not exceed the DSH state allotment, except as otherwise required by the Social Security Act. In no event is the department obligated to use state Medicaid funds to pay more than the state Medicaid allotment of DSH payments due a provider.

(4) remains the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.2803, 37.86.2907, 37.86.2918, and 37.86.2925 regarding Medicaid Inpatient Hospital Services.

The following describes the purpose and necessity of the proposed rule amendments pertaining to each rule:

ARM 37.86.2803

The CMS Publication 15 (Medicare Provider Reimbursement Manual) was updated to the current transmittal number and current effective date for cost reporting periods occurring prior to May 1, 2010, and for cost reporting periods occurring on or after May 1, 2010. The proposed amendments to ARM 37.86.2803 are necessary to update two separate references to a federal publication regarding two distinct cost reporting periods. It is necessary to refer to the most recent version of the publication to ensure that the department and providers are utilizing the most current federal standards and are in compliance with these requirements.

ARM 37.86.2907

In (1)(a) the department changes weights, thresholds, and grouper version number used to assign an All Patient Refined Diagnosis Related Group (APR-DRG) to each Medicaid client discharge in accordance with the current APR grouper.

In (1)(c) the department changes the Montana average base rate from \$4,129 to \$4,630.

In (1)(c)(i) the department changes the base rate for hospitals designated as Centers of Excellence from \$6,890 to \$7,725.

It is necessary for the department to change the date as to when the department will update the APR grouper. The APR grouper is available in October of each year and will be updated by the department the following April.

The department finds it is necessary to change the hospital base rates which will offset the reduced weights that take effect with the implementation of the new APR grouper.

ARM 37.86.2918

Language was added to clarify that outpatient services provided by an entity owned or operated by the hospital and that occur the day of or the day prior to the inpatient hospital admission, must be bundled into a single inpatient claim. It is necessary for the department to add this language to the rule to clarify to providers that these outpatient services are bundled into the inpatient claim and provide no additional payment to providers.

ARM 37.86.2925

Language was added to clarify how the department will collect Disproportionate Share Hospital (DSH) overpayments and redistribute DSH payments based upon audit findings. It is necessary for the department to add this language to rule because DSH audits are required by CMS and such requirements are not enforceable unless they are promulgated as administrative rules. The added language will clarify to providers how the department will collect any overpayments and address the redistribution of these overpayments.

FISCAL IMPACT

The proposed language in ARM 37.86.2907 regarding inpatient hospital base rates will increase these rates effective April 1, 2012. Even though rate increases are proposed, these proposed increases will have a budget neutral effect on the Medicaid budget for SFY 2012. For each APR-DRG, the department determines a relative weight using a national database. These relative weights will be recentered to offset the proposed increase in base rates. Because of this, there will not be any fiscal impact to the Medicaid budget. The revisions in ARM 37.86.2803, 37.86.2918, and 37.86.2925 will also have no fiscal impact.

The proposed changes will affect approximately 372 inpatient hospital providers both in and out of state. Services provided to Medicaid clients will not be affected.

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., February 23, 2012.

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

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

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

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

/s/ John Koch
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State January 17, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.19.401 and 42.19.501 relating) PROPOSED AMENDMENT
to the property tax assistance program)
and exemption for qualified disabled)
veterans)

TO: All Concerned Persons

1. On February 21, 2012, at 2:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., February 13, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.19.401 PROPERTY TAX ASSISTANCE PROGRAM (1) The property owner of record or the property owner's agent must make annual application ~~through~~ to the local department office, in order to receive the benefit provided for in 15-6-134, MCA. An application must be filed, on or before April 15 of the year for which the benefit is sought, on a form available from the local department office ~~on or before April 15 of the year for which the benefit is sought.~~ Applications postmarked after April 15 will not be considered for that year unless:

(a) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness;

(b) the taxpayer can demonstrate the impediments listed above, while not necessarily continuous, existed at sufficient levels in the period of January 1 to April 15 to prevent timely filing of the ~~reporting form~~ application. The department may waive ~~this~~ the requirement set out in this section, on a case-by-case basis, and upon receipt of a written statement, plus any documentation explaining circumstances where:

(i) an applicant who participated in the program in the prior year, ~~would meet~~ meets income requirements in the current year; and

(ii) confusion ~~due to~~ caused by the infirmity may have arisen; ~~and.~~

~~(e)~~(2) The department may waive ~~this~~ the requirement set out in (1) on a case-by-case basis, if:

~~(i)~~(a) the applicant qualified for the program in the prior year; and

~~(ii)~~(b) upon receipt of a written statement, plus any documents explaining the circumstances of why the applicant failed to meet the deadline.

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

~~(6)~~(7) If the applicant ~~has applied~~ qualifies for an extension of time to file the applicant's income tax return, the applicant must indicate this on the application and, no later than October 25, provide a copy of their completed individual estimated income tax worksheet (ESW) income tax return for the tax year immediately preceding the year of the application.

(7) through (11) remain the same, but are renumbered (8) through (12).

AUTH: 15-1-201, MCA

IMP: 15-6-134, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.401 because the current rule requires applicants to submit an individual estimated income tax worksheet if the applicant has qualified for an extension of time to file their tax return. An applicant's qualification for assistance is based upon their income; therefore their estimated income is not needed.

The department is proposing to amend the rule to remove language requiring the submission of the individual estimated income tax worksheet. The proposed amendments require the applicant to submit a copy of their income tax return approximately ten days after the extension deadline. The proposed amendments reduce the paperwork requirements for an applicant who receives an extension, thereby simplifying the process. Additionally, the proposed amendments add clarity to the reporting language.

Finally, all other applicants for property tax assistance who file a timely income tax return by April 15 are already required to provide a copy of that return with their application per (5) of this rule. The change proposed here for those persons filing extension income tax returns simply ensures identical treatment of all applicants.

42.19.501 PROPERTY TAX EXEMPTION FOR QUALIFIED DISABLED VETERANS (1) The property owner of record or the property owner's agent must make application to the local department office, in order to obtain a property tax exemption. An application must be filed, on or before April 15 of the year for which the exemption is sought, on a form available from the local department office, ~~on or before April 15 of the year for which the exemption is sought~~. Applications postmarked after April 15 will not be considered for that tax year unless:

(a) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness;

(b) the taxpayer can demonstrate the impediments listed above, while not necessarily continuous, existed at sufficient levels in the period of January 1 to April 15 to prevent timely filing of the ~~reporting form~~ application. The department may waive ~~this~~ the requirement set out in this section, on a case-by-case basis, and upon

receipt of a written statement, plus any documentation explaining circumstances where:

(i) an applicant who participated in the program in the prior year, ~~would meet~~ meets the income requirements in the current year; and

(ii) confusion ~~due to~~ caused by the infirmity may have arisen; ~~and,~~

~~(e)(2)~~ (2) The department may waive ~~this~~ the requirement set out in (1) on a case-by-case basis, if:

~~(i)(a)~~ (a) the applicant qualified for the program in the prior year; and

~~(i)(b)~~ (b) upon receipt of a written statement, plus any documents explaining the circumstances of why the applicant failed to meet the deadline.

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

~~(3)(4)~~ (4) The following documents must accompany the application:

(a) a letter from the Veterans' Administration ~~which that~~ verifies that the applicant is currently rated 100 percent disabled or is paid at the 100 percent disabled rate. If the disability is permanent, the letter need be submitted only once;

(b) copies of the applicant's completed federal income tax return for the preceding calendar year, including all schedules;

(c) if the applicant ~~has applied~~ qualifies for an extension of time to file the applicant's federal income tax return, the applicant must, no later than October 25, provide a copy of their completed ~~individual estimated income tax worksheet (ESW)~~ income tax return for the tax year immediately preceding the year of the application; and

(d) if the applicant is not required to file an income tax return, the applicant must provide a copy of their completed income tax return documentation that identifies the applicant's income. Examples of the required documentation include, but are not limited to:

(i) social security statements;

(ii) pension statements; or

(iii) bank statements.

(4) through (12) remain the same, but are renumbered (5) through (13).

AUTH: 15-1-201, MCA

IMP: 15-6-211, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.19.501 because the current rule requires applicants to submit an individual estimated income tax worksheet if the applicant has qualified for an extension of time to file their tax return. An applicant's qualification for assistance is based upon their income; therefore their estimated income is not needed.

The department is proposing to amend the rule to remove language requiring the submission of the individual estimated income tax worksheet. The proposed amendments require the applicant to submit a copy of their income tax return approximately ten days after the extension deadline. The proposed amendments reduce the paperwork requirements for an applicant who receives an extension, thereby simplifying the process. Additionally, the proposed amendments add clarity to the reporting language.

Finally, all other applicants for property tax assistance who file a timely

income tax return by April 15 are already required to provide a copy of that return with their application per (5) of this rule. The change proposed here for those persons filing extension income tax returns simply ensures identical treatment of all applicants.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov and must be received no later than February 24, 2012.

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

6. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Locate "Legal Resources" in the left hand column, select the "Rules" link and view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State January 17, 2012

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through IV pertaining to)
financial responsibility of mortgage loan)
originators and control persons and)
ultimate equity owners of mortgage)
entities)

TO: All Concerned Persons

1. On October 13, 2011, the Department of Administration published MAR Notice No. 2-59-458 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 2108 of the 2011 Montana Administrative Register, Issue No. 19.

2. On November 3, 2011, a public hearing was held in Helena concerning the proposed adoption. There were no comments received at the hearing. One person submitted a written comment to the proposed new rules during the comment period.

3. The department has thoroughly considered the comment received. A summary of the comment received and the department's response follow:

COMMENT # 1: Judy L. Sprandel of American Pacific Mortgage dba A Preferred Mortgage Team commented that it is unfair that loan officers in brokerage firms must meet financial responsibility standards when bank loan officers do not. She suggests that the rule be redrafted to include banks in its scope.

RESPONSE #1: Congress enacted the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), 12 USC 5101, et seq., in 2008. It required all states to enact legislation within two years to comply with the SAFE Act. It gave the federal U.S. Department of Housing and Urban Development (HUD) the authority to adopt rules to implement the SAFE Act and to determine whether each state's laws complies with the SAFE Act. Under the SAFE Act, nonfinancial institution mortgage loan originators must be licensed by the states and meet the following requirements: precicensure education; testing; financial responsibility; and character and fitness standards.

On the other hand, states do not license mortgage loan originators employed by financial institutions. They are registered by their primary federal regulator. The standards for registration are character and fitness standards. The requirements for loan originators working for banks and credit unions are different from those pertaining to nonfinancial institution loan originators. The differing requirements for financial institutions and nonfinancial institutions are required by the SAFE Act. The state has no authority over mortgage loan originators employed by financial institutions and no ability to change federal law.

COMMENT #2: Ms. Sprandel also commented that it is unfair to penalize a loan officer who is delinquent in repaying a student loan due to a slow period. In fact, personal finances should not necessarily determine whether a loan officer is financially responsible, competent, ethical, or trustworthy.

RESPONSE #2: The proposed rules do not penalize a loan officer who is delinquent in repaying a student loan due to a slow period. As long as the loan originator has entered into a repayment plan with the lender and is making payments under that plan, that individual would be licensed or continue to be licensed.

The statutes require the department to determine financial responsibility as a precondition to license issuance. HUD has required that states develop reasonable standards to determine whether an applicant has demonstrated financial responsibility. The proposed rules are designed to set forth reasonable standards to guide that determination.

4. The department has adopted New Rules I (ARM 2.59.1739), II (2.59.1740), III (2.59.1741), and IV (2.59.1742) exactly as proposed.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Michael P. Manion
Michael P. Manion, Rule Reviewer
Department of Administration

Certified to the Secretary of State January 17, 2012.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION AND
Rule I and amendment of ARM)	AMENDMENT
18.6.202, 18.6.203, 18.6.204,)	
18.6.205, 18.6.211, 18.6.213,)	
18.6.215, 18.6.221, 18.6.231,)	
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 November 25, 2011, the Department of Transportation published MAR Notice No. 18-130 pertaining to the proposed adoption and amendment of the above-stated rules at page 2470 of the 2011 Montana Administrative Register, Issue Number 22.

2. The department has amended the above-stated rules as proposed.

3. The department has adopted the above-stated rule as proposed: New Rule I (18.6.206).

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

COMMENT #1: The department received one comment stating the proposed amendment which would prohibit signs within 500 feet (rural area) or 140 feet (cities or towns) of an intersecting roadway, junction, property driveway or connecting roadway with approaching or merging traffic is going to be difficult to comply with, especially combined with existing rules. The comment stated signs that are a clear hazard to travel should be moved, but the department should not use a one-size-fits-all approach. The comment stated the proposed amendment would reduce advertising opportunities for small businesses.

RESPONSE #1: The department notes that current administrative rule language already prohibits signs within 500 feet (rural areas) and 140 feet (cities and towns) of an intersection. This restriction has been in place for several years, and was originally implemented to improve traffic safety, as signs placed too close to intersections reduce sight distance for drivers in merging or making turns. The proposed amendment, therefore, is not adding an additional prohibition on sign placement, but instead is clarifying that the distance restriction also applies to junctions, driveways, and any connecting roadway. The clarification is being added for the identical safety reasons, to ensure proper sight distances for drivers.

COMMENT #2: The department received one comment stating the proposed amendment to ARM 18.6.221 which would cut compliance time for erection of new signs from six months to 90 days will not allow for planting a new post, or replacing a new sign in the Big Hole in December, January, February, March and sometimes June.

RESPONSE #2: The department notes the proposed amendment will standardize the response times throughout the rules to 90 days for most activities required of outdoor advertising permit holders. The rules had previously contained varying response times for various required activities, thus creating confusion over the correct time frame. The department's proposed amendment will require a 90-day response time to all department directives, or activities required by permit holders for ease of use by the public. The department further notes that existing rule language at ARM 18.6.221(2) already allows for a permit holder to request an extension of the time limit for new sign erection when construction has been delayed through no fault of the permit holder, such as due to weather. This written extension procedure will remain in place.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Kevin Howlett
Kevin Howlett
Chair
Transportation Commission

Certified to the Secretary of State January 17, 2012.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.104.101 and 37.104.212)
pertaining to emergency medical)
services (EMS))

TO: All Concerned Persons

1. On November 10, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-569 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2382 of the 2011 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 37.104.101 as proposed.

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

37.104.212 RECORDS AND REPORTS (1) remains as proposed.

(2) ~~No later than January 1, 2012 a~~ Ambulance services and nontransporting units must provide data as identified by the department in this rule.

(3) through (12) remain as proposed.

AUTH: 50-6-323, MCA

IMP: 50-6-323, MCA

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

COMMENT #1: Several commenters stated that the mandatory collection of the required data in these proposed rules is too much information, is difficult and time consuming to do, and will be a burden on volunteer services.

RESPONSE #1: The department is confident that data submission will not be an undue burden and it is appreciative of the services that are already providing data or preparing to provide data. Many services are already using electronic patient care record software that allows them to export required data into the department server with minimal effort. Services continuing to use paper patient care records will find that the department-provided software will require only a few minutes time to provide minimum data for most incidents.

COMMENT #2: Several commenters expressed concerns that EMS services unable to provide required data will lose their license. Additionally, commenters wanted to know what penalties for noncompliance to these rules will be.

RESPONSE #2: While the department has authority to cancel a license, such action occurs only pursuant to legal processes provided in statute for a service refusing to remedy or correct a violation. Additionally, any service demonstrating a hardship to meeting these rules may apply for a waiver as provided for in 50-6-325, MCA. Rather than penalties per se, the department plans to implement strategies such as stipulating only services that provide required data will be eligible for future grants.

COMMENT #3: One commenter stated that the department should be required to develop a user-friendly electronic patient care record or allow services to utilize paper forms that can be used to scan data into a data system.

RESPONSE #3: The department has developed a web-based, user-friendly patient care record software product that is available free of charge to any EMS service. The department is constantly implementing enhancements and improvements to this program and it will be forming a data workgroup in 2012 to solicit input on continued improvements. While paper-based data collection has been attempted by several states, none of those systems were able to successfully scan paper data without substantial, time-consuming error correction procedures for the services and states.

COMMENT #4: Two commenters stated that fire departments are already required to provide EMS data to the National Fire Incident Reporting System (NIFRS) data system and that these proposed requirements to provide National EMS Information System (NEMSIS) data should be integrated in order to avoid duplication of effort.

RESPONSE #4: While entry of EMS data into NIFRS is not required, the department recognizes that many fire departments provide such data voluntarily. Only 25 of the 200+ fire departments are affected by these proposed rules and the department is aware that at least some of these departments already have software that allows submission of both NFIRS and NEMSIS data with negligible effort. While similar to NFIRS, the NEMSIS data set is better constructed for EMS system evaluation purposes. The department will provide technical support and training to any service needing assistance. Any ambulance service that finds it has a hardship meeting these requirements will be able to apply for a waiver as described under 50-6-325, MCA.

COMMENT #5: Several commenters stated that these requirements are an unfunded mandate and that EMS services do not have funding to meet the computer, internet, and other technical requirements to submitting required data.

RESPONSE #5: All licensed EMS services are already providing much of the information required under proposed ARM 37.104.212(4) as part of their ongoing licensing application. The entry of minimum data required under ARM 37.104.212(5)

will be accomplished through the same department software and will not require any additional investment by EMS services.

COMMENT #6: One commenter stated that most EMS agencies already have report processes in place to report on their patient care.

RESPONSE #6: While many EMS services are collecting data for their purposes, a key finding in a 2008 legislative audit was that the department did not have a data system that could adequately describe Montana's EMS system. Key recommendations of that audit included the need for the department to develop a data system that could be used to evaluate and improve components of the EMS system and to improve patient access to prehospital care.

COMMENT #7: One commenter asked whether nontransporting units are required to provide data under these proposed rules.

RESPONSE #7: Proposed ARM 37.104.212(7) states that nontransporting units are not required to submit NEMSIS data, but may do so if they wish.

COMMENT #8: One commenter asked several questions related to states that provide data to the NEMSIS including how many states have implemented mandatory electronic reporting; how many reporting states have a high percentage of volunteer services; and how many states provide financial support to EMS service reporting activities.

RESPONSE #8: A national survey of states released recently shows that 39 states currently have the ability through law or regulation to require local EMS agencies to collect and submit EMS data. An additional eight states currently do not require data submission but plan to in the next few years. Thirty-three states and territories are now providing data to the national database and many of those states (e.g., Idaho, North Dakota) are rural like Montana. Twenty percent of the 22 million records currently in the national database come from volunteer services. This is comparable to the department's estimate that 16% of EMS incidents will come from volunteer services. States implementing electronic data collection have supplied software and training free of charge to EMS services as the financial incentive. Over two dozen Montana services are using software the department has developed and made available at no cost to any service.

COMMENT #9: One commenter stated that much of the required data has little to do with quality improvement or quality assurance of patient care.

RESPONSE #9: NEMSIS is a national effort to create a database of information about local and state agencies that will describe EMS in a fashion previously not possible and to utilize that data to improve patient care. Within the larger NEMSIS data set of over 400 data elements, federal, state, and many professional organizations collaborated on a national, minimum data set that could be used to evaluate and improve EMS systems. The minimum data required under these rules

will enable the department to evaluate the EMS system and to develop strategies that will improve patient care. As one of many examples, the department could utilize NEMESIS data to evaluate delays in getting trauma or stroke patients to definitive care and to then develop strategies to decrease causes of such delays.

COMMENT #10: Two commenters noted that proposed rules require every entity involved with a patient's care to complete a patient record on that patient and this will result in duplicate entry of data and inaccurate reports.

RESPONSE #10: While only ambulance services will be required to provide data, the department does want to obtain data from all EMS services on a call. This strategy will enable evaluation of all components of the EMS system and how they may affect patient outcomes. There are several fields in the minimum data set that will enable the department to accurately describe multipatient and multiservice responses for statistical purposes.

COMMENT #11: Two commenters stated that these rules require EMS services to use the department's software to collect patient care information during a call and that there are significant technological and legal barriers to accomplishing this.

RESPONSE #11: These proposed rules only require ambulance services to provide minimum data into the department data server at least quarterly. While these rules do not require services to use software to collect an entire patient record, many services are using technologies such as tablets or other processes to collect patient information without duplication of effort or loss of data. Additionally, the department will be introducing tablet-based data entry functionality in 2012 that will help the two dozen services using the department's software to safely and reliably collect patient information while on a run.

COMMENT #12: One commenter questioned why demographic information about EMS personnel is necessary.

RESPONSE #12: To properly administer programs such as EMS service licensing, the department collects demographic information. Additionally, workforce issues are one of the most pressing challenges to the viability of EMS services and the department is collecting demographic information in order to develop strategies to improve the recruitment and retention of EMS providers, especially volunteers.

COMMENT #13: A commenter stated that vehicle hours and mileage are not good indicators of the condition or reliability of an EMS vehicle and that such information is already collected during EMS service inspections.

RESPONSE #13: Information about the vehicle's age and mileage will help the department characterize the overall state of Montana's ambulance fleet. While such information has historically been documented every two years during inspections, it would now be collected annually and be available in the data system for analysis and reports.

COMMENT #14: A commenter stated that implementation of this rule change seems abrupt and that services have not had enough time to prepare for these changes.

RESPONSE #14: The department started this process nearly two years ago with distribution of draft rules and informational sessions. A hearing was held in the spring of 2011 and additional informational opportunities have been provided over the summer. The department feels that EMS services have had adequate notice that such changes were being proposed. Due to adoption of these rules occurring in mid-January 2012, we are changing the effective date of these rules to April 1, 2012. This will give the department adequate time to provide education and technical assistance to ambulance services that will be providing data.

COMMENT #15: A commenter questioned why EMS should have to submit such detailed reporting while other healthcare services do not.

RESPONSE #15: These proposed rules require only minimum data be submitted by ambulance services. Reporting of healthcare data to the department for other purposes and reporting of data by healthcare providers, such as for hospital accreditation or JCAHO, is very common in the healthcare industry.

COMMENT #16: A commenter stated that the Board of Medical Examiners is responsible for patient care; that the department is responsible for ambulance service; and that data elements related to patient care are not related to the safe operation of the service itself.

RESPONSE #16: The department has been mandated through several statutes including 50-6-102, 50-6-301, 50-6-401, MCA for the protection of the health and safety of the Montana's citizens and visitors. Again, a 2008 legislative audit highlighted the need for the department to develop an information system to support its regulatory responsibilities. Collection of minimum patient information is necessary in order to evaluate the response of prehospital services on patients who suffer illness and injury and to enable the department to develop strategies to improve patient outcomes.

COMMENT #17: A commenter suggested that data collection should only be required from larger ambulance services that are already using electronic patient records and that data from smaller services should be optional.

RESPONSE #17: As noted in a 2008 legislative audit, the department does not have a comprehensive data system that can be used to describe EMS services and to be able to advocate for improvements to the EMS system. The department needs to obtain data from all EMS services and it will work with all services to enable them to provide data with as little burden as possible.

COMMENT #18: A commenter stated that the department already has rules mandating reporting that have never been enforced and that he feels current rules should be enforced instead of proposed rules. Another commenter stated that the department has had data reporting authority for thirty years; has never previously made any attempt to collect data; and has now proposed rules for a massive, excessively detailed process that will require all services additional costs.

RESPONSE #18: Current requirements in ARM 37.104.212(4) requiring services to report the number and types of runs, the type of emergency, and average response times quarterly is very vague and only useful for statistical purposes. Data collection and analysis has been the foundation of improved outcomes for patients in the trauma system and the department now needs to follow the lead of 33 other states that are participating in the NEMSIS project to collect data that can be used to evaluate and improve patient care.

COMMENT #19: A commenter stated that proposed rules are confusing as they reference the entire NEMSIS data set, but then only require minimum data collection. The commenter also states that rules contain many unnecessary items, items that are not the business of a state regulatory agency and that such data collection may be a violation of personal privacy.

RESPONSE #19: Under proposed ARM 37.104.212 (4) and (5), EMS services are required to provide minimum data about their EMS service and their patients. Proposed ARM 37.104.212(7) states that EMS services are not required to submit other NEMSIS data elements, but may do so. As such, proposed ARM 37.104.212(9) adopts the entire NEMSIS data standard so that any data provided is in the NEMSIS standard. While the commenter provided no detail about what items are unnecessary or of concern to personal privacy, it is the policy of the department to protect the confidentiality of private information and to ensure that access to such information is restricted to legitimate purposes of program administration.

COMMENT #20: A commenter stated that ARM 37.104.212(8) requires the department to consult (thus approve) software purchases. He also stated that this conflicts with another section that only requires services to provide minimum data.

RESPONSE #20: Software to collect electronic patient care data represents a significant investment for EMS services. Under these rules, services purchasing electronic patient care record software will only be required to consult with the department in order to assure that their investment will be for software that is NEMSIS-certified and capable of submitting required data. The department will not involve itself further with the approval of purchases or selection of specific vendors.

COMMENT #21: A commenter stated concern for the risk to EMS services that choose to use the department web server when there is no dedicated funding to assure its availability regardless of funding priorities in the future.

RESPONSE #21: Using a variety of funding strategies, the department has funded the development and maintenance of its EMS software for over six years and a trauma registry for over 20 years. This data collection project is a high priority for the department and it will continue to support the EMS data system through any variety of funding strategies as needed.

COMMENT #22: A commenter expressed that he had numerous concerns as to the privacy and violation thereof for both patients and EMT providers under these data collection requirements.

RESPONSE #22: There is no protected health information within the minimum data required under these rules. For services who wish to provide more than the minimum data, HIPAA statutes such as 45 C.F.R. § 164.512(b)(1) clarify that covered entities may disclose protected health information without an individual's authorization to a public health authority, such as the department, for the purpose of public health activities. Data submitted to the department is stored on state data servers. Under 2-17-534, MCA, the Department of Administration is responsible for providing centralized management and coordination for security of data and information technology resources. Confidential information is protected by statutes and data policies. In addition to security implemented by the Department of Administration, the department's software incorporates state-of-the-art security including password-protected and permission-based access.

COMMENT #23: A commenter stated that proposed rules will place a burden on the private and public sector and even though they will provide the majority of the data, they will not be eligible for funding realized from such data and that they will never have a return on their investment or effort.

RESPONSE #23: All of the private and other large services the department has met with currently utilize electronic data systems that will enable them to submit the required data to the department with little effort. It is the intent of the department to consider all services that provide data when determining eligibility for future funding opportunities that become available.

COMMENT #24: Two commenters asked about what the value is of data collection for EMS services and Montana communities.

RESPONSE #24: Research demonstrates that collection and analysis of data to evaluate the EMS system improves patient care and patient outcomes. Collection of system data as required under these rules is a core function of public health and the department will utilize such data to help EMS services and other parts of the emergency care system provide better patient care and improve the community's health.

5. These rule amendments are effective April 1, 2012.

/s/ Shannon L. McDonald
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State January 17, 2012

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

In the matter of the amendment of) NOTICE OF AMENDMENT
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)

TO: All Concerned Persons

1. On November 25, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-570 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2489 of the 2011 Montana Administrative Register, Issue Number 22.

2. The department has amended ARM 37.80.101, 37.80.102, 37.80.205, 37.80.206, and 37.80.315 as proposed.

3. The department has amended the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

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

(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, FBI, state and national 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~~ an FBI fingerprint background check and will be required annually thereafter at the applicant's expense.

(4) through (4)(e) remain as proposed.

(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; or

(h) is the principal responsible for providing child care and is not acting as an agent for another.

(5) and (6) remain as proposed.

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 as proposed.

(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. Any shareholder, officer, partner, owner, or other individual involved in the management of a child care business that does not reimburse the department for overpayments made to the child care business is disqualified from receiving Child Care and Development Fund (CCDF) funds or being certified as a provider.

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

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

4. After further review of the proposed rule, the department is adding language to ARM 37.80.306(4) and 37.80.502(8). This change to the proposed rules does not make a substantive change in the intent of the rules as proposed. The additional language is added to clarify that an application to act as a legally certified provider must be made in the name of the person responsible for the provision of child care. This change in language is not a change from current department practice. Adding language to the rules will ensure they more clearly state the department's current requirements.

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

COMMENT #1: Regarding ARM 37.80.205, a commenter stated that it supports the rule change if it is necessary to minimize a waiting list for child care.

RESPONSE #1: The department appreciates the feedback.

COMMENT #2: Regarding ARM 37.80.206, a commenter stated that it supported the change in certified enrollment hours if it is necessary to minimize a waiting list for child care.

RESPONSE #2: The department appreciates the feedback.

COMMENT #3: Regarding ARM 37.80.306(3), a commenter stated that the phrase "who might come in contact with children" is too vague and might allow this provider type to declare that other adults in the household would never come in contact with children in care and that declaration would not hold up in the fair hearing process.

RESPONSE #3: The department agrees and has removed the phrase "who might come in contact with children to whom care is provided."

COMMENT #4: Regarding ARM 37.80.306, a commenter stated that the rule requires individuals who have lived outside the state of Montana to have annual Montana Department of Justice fingerprint background checks if out-of- state background checks are unable to be obtained. However, procedures 6-2 page 6/8 item 5a states that all individuals (regardless of always being in Montana or not) will have to do FBI background checks. The procedures were created by the Early Childhood Services Bureau (ECSB) to guide child care providers and may change based on this rule change. The commenter wants to be sure about the processes and is concerned that the reference to FBI background checks may no longer apply.

RESPONSE #4: The department agrees with the comment and is adding language to make it clear that FBI background checks are required annually.

COMMENT #5: Regarding ARM 37.80.315, a commenter asked how information about the provider rights and responsibilities will be distributed to providers and parents. Is a provider defined as LCP, family, group, and center? Will there be a form?

RESPONSE #5: Procedures are addressed in the ECSB procedure manual posted on the bureau's SharePoint web site.

COMMENT #6: Regarding ARM 37.80.502, a commenter questioned how this change in underpayment, overpayment, and overclaim rule will be tracked and expressed support for the rule change.

RESPONSE #6: The department is adopting ARM 37.80.502 with new language to more clearly state who is disqualified from continuing to participate in the program if the department is unable to collect overpayments. Underpayment and overpayment will be tracked as stated in the ECSB procedure manual posted on the bureau's SharePoint web site.

COMMENT #7: Regarding ARM 37.80.306, a commenter inquired as to whether there will be a form associated with this change. What will the procedure be if the form is not completed online or providers claim they do not have access?

RESPONSE #7: The department appreciates feedback about its forms. The department's forms will be updated to be consistent with these rule changes. The department will continue to monitor and to improve its online access for the public and contractors.

COMMENT #8: Referring to Section 1-8 of the manual, a commenter asked if there will be a difference in the online process between LCP and registered/licensed providers with respect to the rights and responsibilities form.

RESPONSE #8: The department appreciates feedback about its rights and responsibilities form. The department's forms will be updated to be consistent with these rule changes. The department will continue to monitor and to improve its online access for the public and contractors.

COMMENT #9: Referring to Section 2-1 of the manual, a commenter asked about the effective date of the application.

RESPONSE #9: Procedures are addressed in the ECSB procedure manual posted on the bureau's SharePoint web site.

/s/ Geralyn Driscoll
Rule Reviewer

/s/ Mary E. Dalton acting for
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State January 17, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I (42.13.602), New Rule II)
(42.13.603), and New Rule III)
(42.13.806) relating to the use by)
brewers and distillers of ingredients)
containing alcohol)

TO: All Concerned Persons

1. On December 8, 2011, the department published MAR Notice No. 42-2-872 regarding the proposed adoption of the above-stated rules at page 2618 of the 2011 Montana Administrative Register, issue no. 23.

2. A public hearing was held on January 9, 2012, to consider the proposed adoption. No one appeared at the hearing to testify. However, written comments were received subsequent to the hearing from Tony Herbert, of the Montana Brewers Association. Those comments are summarized as follows, along with the response of the department:

COMMENT NO 1: Mr. Tony Herbert, Executive Director of the Montana Brewers Association, stated the proposed rules provide for a reasonable interpretation of the intent of the new law, and for a process that will work well for brewers choosing to purchase flavors and other nonbeverage ingredients containing alcohol.

RESPONSE NO 1: The department thanks Mr. Herbert and the Montana Brewers Association for their interest in this proposed rulemaking action and appreciates the supportive comments.

3. The department amends New Rule II (42.13.603) to correct a spelling error as follows, stricken matter interlined, new matter underlined:

NEW RULE II (42.13.603) USE OF FLAVORS AND NONBEVERAGE
INGREDIENTS CONTAINING ALCOHOL IN THE MANUFACTURING
MANUFACTURING OF BEER (1) through (8) remain as proposed.

AUTH: 16-1-303, MCA
IMP: 16-1-401, 16-1-404, MCA

4. Therefore, the department adopts New Rule II (42.13.603) with the amendment shown above and adopts New Rule I (42.13.602) and New Rule III (42.13.806) as proposed.

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

at www.revenue.mt.gov. Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to 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. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

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

Certified to Secretary of State January 17, 2012

CONSTITUTION - Rules of construction for constitutional language;
ELECTIONS - Meaning of the phrase "current term" in Article IV, section 8;
ELECTIONS - Term limits for statewide elected officials and legislators;
LEGISLATURE - Term limits for legislators;
MONTANA CODE ANNOTATED - Sections 1-2-107, 1-3-223, -232, 2-16-214, 13-10-201, (8), (a), (b), (c);
MONTANA CONSTITUTION OF 1972 - Article IV, section 8, (1), (a), (b), (c), (d), (e), (2), (3);
OPINIONS OF THE ATTORNEY GENERAL - 47 Op. Att'y Gen. No. 9 (1997).

HELD: Pursuant to section 13-10-201, the phrase "current term" in article IV, section 8, means the term served after regular election to a full term of office. Based upon that definition, a candidate may file for office if, at the time the candidate begins to serve in that office, he or she will have had an 8-year break in service over a 16-year period of time.

January 11, 2012

Ms. Linda McCulloch
Secretary of State
Montana State Capitol
P.O. Box 202801
Helena, MT 59620-2801

Dear Secretary McCulloch:

You have requested my opinion on the question of whether Senate Bill 311, enacted by the 2011 Legislature, fulfills its intent which was to clarify the way term limits are calculated under Montana law. It is my opinion that SB 311 does fulfill its intended purpose and that term limits should now be calculated based upon the statutory definition of "current term" provided in the bill. In order to explain my conclusion, I provide the following background.

In 1992, through a constitutional initiative referred to as CI-64, Montana voters amended the Montana Constitution to place limits on the years of service of certain elected officials. The text of CI-64, which became article IV, section 8 of the Montana Constitution provides as follows:

Section 8. Limitation on terms of office. (1) The secretary of state or other authorized official shall not certify a candidate's nomination or election to, or print or cause to be printed on any ballot the name of a candidate for, one of the following offices if, at the end of the current term of that office, the candidate will have served in that office or had he not resigned or been recalled would have served in that office:

(a) 8 or more years in any 16-year period as governor, lieutenant governor, secretary of state, state auditor, attorney general, or superintendent of public instruction;

(b) 8 or more years in any 16-year period as a state representative;

(c) 8 or more years in any 16-year period as a state senator;

(d) 6 or more years in any 12-year period as a member of the U.S. house of representatives; and

(e) 12 or more years in any 24-year period as a member of the U.S. senate.

(2) When computing time served for purposes of subsection (1), the provisions of subsection (1) do not apply to time served in terms that end during or prior to January 1993.

(3) Nothing contained herein shall preclude an otherwise qualified candidate from being certified as nominated or elected by virtue of write-in votes cast for said candidate.

Generally, the law limits legislators and certain statewide elected officials from serving no more than 8 years in office in any 16-year period. Following enactment of article IV, section 8, questions arose as to its meaning and application and then Secretary of State Mike Cooney requested an Attorney General's Opinion to clarify its application. An Opinion was issued by then Attorney General Joe Mazurek that answered a number of questions and, as you note in your request, has been used by subsequent Secretaries of State in calculating term limits and certifying candidates for placement on the ballot (hereinafter referred to as the 1997 AG Opinion). See 47 Op. Att'y Gen. No. 9 (1997).

One of the questions answered in the 1997 AG Opinion was the meaning of the phrase "at the end of the current term of that office" in section 8(1) and whether it operated to preclude a candidate from running for office if, at the time the candidate filed for office, they had served 8 or more years in a 16-year period. The example given in the opinion was that of an officeholder who served two four-year terms in the state senate. The second term expired in 2001 and the elected official then sat out two terms before seeking to run again. The question presented was whether that office holder could file for office in 2008. The 1997 AG Opinion concluded that although such a candidate would satisfy the required 8-year break in service in any 16-year period after election to a full term, based on the structure of CI-64 they would be barred from becoming a candidate. The 1997 AG Opinion found that rather than creating a true term limit, CI-64 operated to restrict a candidate's access to the ballot.

The 1997 AG Opinion also answered the question of whether the partial term of an official who is appointed or elected after a death or vacancy should be included when calculating the official's constitutional term limit. The opinion concluded that it should not and that time served completing a term of office upon a death or vacancy would not be held against a candidate who chose to seek that office after such service.

During the 2003 session, the Legislature passed a bill to codify this conclusion. House Bill 305, which was subsequently codified as Mont. Code Ann. 2-16-214, provided:

As used in Article IV, section 8, of the Montana constitution, "current term" means the term served after regular election to a full term to an office and does not include time served in an appointed or an elected capacity in an office to finish the term of the original incumbent after a vacancy has occurred.

(Emphasis added.)

Then, in 2011 the Legislature passed SB 311, which gave rise to your opinion request. The title of SB 311 provides that the intent of the bill is to clarify "the terms of office and years served for officials elected to and candidates seeking nomination for offices that are constitutionally term-limited."

The text of the bill amended Mont. Code Ann. § 13-10-201, which governs a candidate's declaration for nomination, to provide a new subsection intended to clarify application of the term limits set forth in article IV, section 8:

(8) For the purposes of implementing Article IV, section 8, of the Montana constitution, the secretary of state shall apply the following conditions:

(a) A term of office for an official serving in the office or a candidate seeking the office is considered to begin on January 1 of the term for which the official is elected or for which the candidate seeks election and end on December 31 of the term for which the official is elected or for which the candidate seeks election.

(b) A year is considered to start on January 1 and end on the following December 31.

(c) "Current term," as used in Article IV, section 8, of the Montana constitution, has the meaning provided in 2-16-214.

In your opinion request, you note that the phrase "current term" has already been defined by the 2003 Legislature, and that after the passage of SB 305, the 1997 AG Opinion regarding calculation of term limits continued to be followed. You therefore question whether SB 311 has any effect.

In light of this concern, I have reviewed the legislative history of HB 305. That history indicates that the definition of "current term" was intended to codify the conclusion of the Attorney General regarding calculation of term limits for officials appointed or elected to finish the term of an incumbent after a vacancy, not to provide a broader definition for use in calculating term limits for officials elected to a new term in office. 03/05/03 Hr'g on HB 305, Tape 1, Side A at 13-16.1. The sponsor explained that the intent of the bill was to provide "that if a person is

appointed to fill a vacancy, that term will not count toward the term limits law" and that the bill "was consistent with the Attorney General's Opinion. . . ." Minutes Senate Committee on State Administration, March 5, 2003 (remarks of [bill sponsor]). The conclusion that the enactment of section 2-16-214 was only meant, at that time, to clarify the situation of an elected official taking office after a vacancy created by death or resignation of the incumbent is supported by the fact that then Secretary of State Bob Brown, through his chief legal counsel, testified in support of the bill. Secretary Brown continued to calculate term limits in the manner set forth in the 1997 AG Opinion indicating he did not understand the bill to have broader meaning. Based upon this history, I do not believe HB 305 resolved the issue SB 311 was intended to address.

It is a basic maxim of jurisprudence that the Legislature does not perform useless acts. Mont. Code Ann. § 1-3-223. An interpretation that gives effect is always preferred over an interpretation that makes the statute void or treats the statute as mere surplusage. Mont. Code Ann. § 1-3-232, see also American Linen Supply Co. v. Department of Revenue, 189 Mont. 542, 545, 617 P.2d 131, 133. If the Legislature did not intend to clarify the meaning of "current term" as it is used in article IV, section 8(1), it would not have amended section 13-10-201 to provide for application of the definition used in section 2-16-214.

While section 2-16-214, at the time it was enacted, was only meant to incorporate the vacancy holding of the 1997 AG Opinion, SB 311's reference to section 2-16-214 and its definition of "current term" is clearly intended to clarify how that phrase should be construed in calculating term limits pursuant to Article IV, section 8. SB 311 thus supersedes part IV of 47 Op. Att'y Gen. No. 9, which concluded that a candidate for office must have had an 8-year break in service in any 16-year period at the time of filing for office.

In his opinion interpreting the construction and meaning of article IV, section 8, Attorney General Mazurek acknowledged the ambiguities of this voter-enacted constitutional initiative. The 1997 AG Opinion strived to provide a reasonable construction of the initiative based on what limited legislative history existed and, importantly, on how the average voter would have understood the intent of the initiative. In trying to reach the proper construction of section 8(1), Attorney General Mazurek concluded that "current term" meant "the term during which the former office holder seeks to file for office."

Constitutional language is interpreted by the same rules generally applied in the interpretation of statutes. State ex rel Gould v. Cooney, 253 Mont. 90, 831 P.2d 593 (1992). When interpreting a statute, I seek to implement the intention of the Legislature, or in this case, the voters. Mont. Code Ann. § 1-2-102; Montana Vending v. Coca-Cola Bottling, 2003 MT 282, ¶ 21, 318 Mont. 1, 78 P.3d 499 (citations omitted). The general rule I must follow when interpreting statutes is that if the language is clear on its face, its meaning must be determined solely from the plain import of the language used. See, e.g., State v. Trull, 2006 MT 119, ¶ 32, 332 Mont. 233, 136 P.3d 551 (citations omitted). Reliance on legislative history and

extrinsic sources is only appropriate when the plain meaning of the law cannot be determined from the language used. See, e.g., State v. Merry, 2008 MT 288, ¶ 17, 345 Mont. 390, 191 P.3d 428.

Like Attorney General Mazurek, I find certain aspects of article IV, section 8 to be ambiguous, including the meaning intended by the phrase "current term." And while the 1997 AG Opinion relied upon the plain meaning of section 8(1) in reaching the conclusion discussed above, it also noted that "[a] voter reading CI-64 might not readily conclude that this is the result of the language used. A reading of CI-64 could produce the conclusion that the intention is to limit a former officeholder to eight years of service in any 16-year period, and that at the conclusion of the eight-year period the former officeholder would be free to serve in the office again."

While it is the role of the judicial branch to interpret the constitution, it is a proper function of the legislative branch to provide definitions to bring meaning and clarity to the law. See Mont. Code Ann. § 1-2-107. SB 311 is intended to clarify the laws governing term limits in Montana. It provides that in implementing the term limits provided for in article IV, section 8, the phrase "current term" shall have the meaning given in section 2-16-214, which provides "'current term' means the term served after regular election to a full term to an office." (Emphasis supplied.) Thus SB 311 incorporates the meaning Attorney General Mazurek acknowledged voters may have envisioned when voting for CI-64, and thereby fulfills the Legislature's intent to clarify the way term limits are calculated under Montana law.

THEREFORE, IT IS MY OPINION:

Pursuant to section 13-10-201, the phrase "current term" in article IV, section 8, means the term served after regular election to a full term of office. Based upon that definition, a candidate may file for office if, at the time the candidate begins to serve in that office, he or she will have had an 8-year break in service over a 16-year period of time.

Sincerely,

/s/ Steve Bullock
STEVE BULLOCK
Attorney General

sb/anb/jym

SUBDIVISION AND PLATTING ACT - The Act is not limited to divisions of land for residential dwellings;

SUBDIVISION AND PLATTING ACT - The exemption at Mont. Code Ann. § 76-3-204 does not apply to the construction or conveyance of more than one building, structure or improvement;

SUBDIVISIONS - The Subdivision and Platting Act is not limited to divisions of land for residential dwellings;

SUBDIVISIONS - The exemption at Mont. Code Ann. § 76-3-204 does not apply to the construction or conveyance of more than one building, structure or improvement;

EXEMPTIONS- The exemption at Mont. Code Ann. § 76-3-204 does not apply to the construction or conveyance of more than one building, structure or improvement;

MONTANA CODE ANNOTATED - Sections 1-2-101, -105(3), 76-3-101 to -625, -102, -103(4), (15), -204, -205(2), -208;

OPINIONS OF THE ATTORNEY GENERAL - 52 Op. Att'y Gen. No. 5 (2008), 45 Op. Att'y Gen. No. 12 (1993), 40 Op. Att'y Gen. No. 57 (1984), 39 Op. Att'y Gen. No. 74 (1982).

- HELD:
1. The term "subdivision" under the Subdivision and Platting Act does not refer only to a division of land for the purpose of providing a "residential dwelling."
 2. The provision of Mont. Code Ann. § 76-3-204 exempting from subdivision review the "sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed" does not apply to the construction or conveyance of more than one building, structure or improvement on a single tract of record.

January 13, 2012

Mr. Fred Van Valkenburg
Missoula County Attorney
200 West Broadway
Missoula, MT 59802-4292
Dear Mr. Van Valkenburg:

You have requested my opinion on questions that I have rephrased as follows:

1. Does the term "subdivision" under the Subdivision and Platting Act refer only to a division of land for the purpose of providing a "residential dwelling"?
2. Does the provision of Mont. Code Ann. § 76-3-204 exempting from subdivision review the "sale, rent, lease, or other

conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed" apply to the construction or conveyance of more than one building, structure or improvement on a single tract of record?

Your letter informs me that your office and the Missoula Office of the City Attorney disagree over the answers to the above questions. As both offices advise the joint city-county Office of Planning and Grants, you are requesting an Attorney General's opinion. I have also received a letter from the Missoula City Attorney detailing the City's position.

I

The Montana Subdivision and Platting Act ("the Subdivision Act"), Mont. Code Ann. §§ 76-3-101, et seq., generally requires local review and approval of all subdivisions. Under the Act,

"Subdivision" means a division of land or land so divided that it creates one or more parcels containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States government section, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed and includes any resubdivision and further includes a condominium or area, regardless of its size, that provides or will provide multiple space for recreational camping vehicles or mobile homes.

Mont. Code Ann. § 76-3-103(15).

When interpreting the Subdivision Act, I construe the statutes consistently with the expressed purposes of the Act as articulated by the Legislature and the Montana Supreme Court. 40 Op. Att'y Gen. No. 57 (1984), citing Mont. Code Ann. § 76-3-102. The Montana Supreme Court refuses to read exceptions into the Act which would subvert the purposes expressed in Mont. Code Ann. § 76-3-102. Mills v. Alta Vista Ranch, 2008 MT 214, ¶ 18, 344 Mont. 212, 187 P.3d 627. Therefore, where no specific exception applies, the presumption is no such exception is intended. Id.

Because I may not read exceptions into the Act, I cannot read a "residential dwelling" requirement into the definition of a "subdivision" nor simply assume that divisions for nonresidential purposes are exempt. This is particularly true where, as here, implication of such an exception might significantly undermine the purposes of the Act. A subdivision for a commercial rather than a residential purpose could reasonably be expected to implicate any of the purposes of the Act separately stated in Mont. Code Ann. § 76-3-102.

Neither the definition of "subdivision" nor any other language in the Act uses the term "residential" or directly speaks to the uses for which the divided land will be put

in a way that would imply that the Act applies only when the subdivided lots are to be put to residential use. A "subdivision" includes a division of land "in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed," and there is no separate restriction or exemption within the Act limiting subdivisions for rent or lease to "residential dwellings." A "subdivision" under the Act is therefore not limited to divisions of land intended to be "residential dwellings."

II

Under the Subdivision Act,

a "division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter.

Mont. Code Ann. § 76-3-103(4). Part 2 of the Subdivision Act, however, lists a number of actions that are exempt from the Act's provisions despite the fact that they might otherwise fit within the definition of a "division of land." Your second question involves one of these exemptions.

The exemption found at Mont. Code Ann. § 76-3-204 states:

The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a division of land, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

Missoula County argues that the exemption in this provision is limited to a conveyance of one or more parts of a single building on a single tract of record. The City, on the other hand, argues that the provision exempts both several buildings and single buildings. Thus, under the City's interpretation, a developer could construct and sell, rent or lease several buildings on a single tract of record without subdivision review. For the reasons that follow, it is my opinion that the exemption at Mont. Code Ann. § 76-3-204 is limited to the sale, rent or lease of one or more parts of a single building on a single tract of record.

As noted above, I must construe the Subdivision Act with an eye toward achievement of the Act's objectives. Therefore, I must "narrowly [construe] expressly stated exemptions and exceptions." Alta Vista, ¶ 18. I must also read statutes together in a coherent manner if possible, giving full force and effect to each provision. Mont. Code Ann. § 1-2-101; Oster v. Valley County, 2006 MT 180, ¶ 17, 333 Mont. 76, 140 P.3d 1079 ("[T]he Legislature does not pass meaningless legislation, and accordingly, this Court must harmonize statutes relating to the same subject, as much as possible, giving effect to each").

If the language of a statute is unambiguous, then of course it controls. Shelby Distrib. v. DOR, 2009 MT 80, ¶ 18, 349 Mont. 489, 206 P.3d 899. The exemption in question refers to: "one or more parts of a building, structure, or other improvement" (Emphasis added.) Thus when read narrowly, the plain language of the exemption applies only to one building. The City, though, argues that while the exemption refers to "a building," it should be construed as including multiple buildings on the same tract because in interpreting statutes the singular can be construed to include the plural. Mont. Code Ann. § 1-2-105(3).

Your question arises against the backdrop of Attorney General Greely's opinion in 40 Op. Att'y Gen. No. 57 (1984). The question presented was whether construction on a single tract of land of 48 four-plex housing units for residential purposes constituted a "division of land" and whether the exemption at Mont. Code Ann. § 76-3-204 applied. At the time of the opinion, Mont. Code Ann. § 76-3-204 read as follows:

The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

Attorney General Greely concluded that the proposed development constituted a division of land because it would create at least 48 "parcels . . . in order that title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed." He further concluded that Mont. Code Ann. § 76-3-204 was inapplicable, because the term "situated" in the exemption referred only to the sale, rental or lease of an "existing building." Id. at 232-33 (citing to 39 Op. Att'y Gen. No. 74 (1982)). The opinion did not analyze whether Mont. Code Ann. § 76-3-204 was limited to a single building.

The next year the Legislature, apparently reacting to Attorney General Greely's opinion, deleted the phrase "situated on one or more parcels of land" and added the words "whether existing or proposed" to the exemption. The clear purpose of this amendment was to extend the exemption to all conveyances of a part of a building regardless of whether the building currently exists or was proposed for future construction. 45 Op. Att'y Gen. No. 12 (1993); Lee v. Flathead County, 217 Mont. 370, 373, 704 P.2d 1060, 1063 (1985) (construing the amendment to clarify that the Subdivision Act applies both to existing and to new buildings). In this respect, the amendment had the effect of overruling Attorney General Greely's opinion, but only to the extent of its holding that Mont. Code Ann. § 76-3-204 applied only to existing buildings.

Attorney General Greely observed that the construction of 48 four-plexes would be "a housing development" that would "inevitably result in various social and economic impacts on the community." He found that "this is the precise type of development which the Legislature intended should be submitted for local review under the Act."

40 Op. Att'y Gen. No. 57 at 234. Such a "housing development" specifically affects the "overcrowding of land," "congestion in the streets," and the "preservation of open space," as well as "public requirements" such as "adequate light, air, water supply, sewage disposal, parks and recreation areas [and] ingress and egress." Mont. Code Ann. § 76-3-102. These concerns require that Mont. Code Ann. § 76-3-204 be narrowly construed to apply only to a single building, whether existing or proposed.

The City points to an unofficial letter of advice issued by an attorney in this office on February 27, 1995. In that letter, the attorney opined that the 1985 legislation had overruled 40 Op. Att'y Gen. No. 57 (1984) in its entirety. Then, applying the interpretive guideline that the singular may be construed to include the plural, Mont. Code Ann. § 1-2-105(3), the attorney concluded that the reference in Mont. Code Ann. § 76-3-204 to "building" in the singular included the plural "buildings" as well, thereby extending the reach of the exemption to multiple buildings on the same tract. For the reasons that follow, I disagree with that analysis. The February 27, 1995, letter of advice and any later statements based on it therefore should no longer be deemed authoritative.

The term "building," as used in the singular in this statute, is not ambiguous. There is no language in the Subdivision Act that suggests that "building" in this context should mean anything other than a single structure. While "[u]se of singular or plural language in legislation is generally not a matter of substantive significance," 51 Op. Att'y Gen. No. 3 (2005), in the context of the Subdivision Act exemptions must be construed narrowly. General provisions of statutory construction, such as "the singular includes the plural," are not inflexible rules, but rather guidelines to be applied judiciously to aid in the ultimate pursuit of the intention of the Legislature where the language used is unclear. See, e.g., 52 Op. Att'y Gen. No. 5, ¶ 16 (2008). They should not be applied to create ambiguity where none otherwise exists, because "ambiguity must be apparent from the statutory language itself." In Re Reppert, 84 B.R. 37 (E.D. Penn. 1988); see also Montana Shooting Sports Ass'n v. State, 2008 MT 190, ¶ 34, 344 Mont. 1, 185 P.3d 1003 (the Court "may not create [a statutory] ambiguity where none exists . . .") (Nelson, J., dissenting).

Construing Mont. Code Ann. § 76-3-204 to allow the conveyance of several buildings on a single tract of land without subdivision review would create a loophole that swallows the general rule that conveyances by rent or lease are "subdivisions" and subject to review under the Act. Mont. Code Ann. § 76-3-103(15); see 45 Op. Att'y Gen. No. 12 (1993) (construing Mont. Code Ann. § 76-3-204 as exempting condominiums would "swallow the general rule" that condominiums are subdivisions subject to review); Thornton v. Flathead Co., 2009 MT 367, ¶ 22, 353 Mont. 252, 220 P.3d 395 (refusing to create a "wholesale blanket exemption" from subdivision review for condominiums proposed on parcels created prior to the Act's enactment). Given the express purposes of local subdivision review stated in Mont. Code Ann. § 76-3-102, it is hard to believe, for example, that the Legislature would have intended to allow construction of a development such as the one considered in 40 Op. Att'y Gen. No. 57 (1984)--48 four-plexes totaling 192 dwelling units on a tract of less than 20 acres--without subdivision review.

This conclusion is consistent with, and supported by, the decision of the Montana District Court for the First Judicial District in Derick v. Lewis and Clark County, Cause No. BDV-2007-304 (hereafter "Derick"). In holding that the exemption at Mont. Code Ann. § 76-3-204 applies only to a single building, the District Court in Derick discussed House Bill 494, which was passed by the Legislature during the 2011 session but vetoed by the Governor. HB 494 sought to amend Mont. Code Ann. § 76-3-204 by making "building, structure or other improvement" plural. Derick at 6. As noted by the Governor's veto letter, this bill "would broaden the Act's exemptions" Id. at 7. The Court therefore inferred that Mont. Code Ann. § 76-3-204, which the Legislature sought to change by pluralizing, must be read as only applying to a single building. Id. at 7-8.

Derick also relies on the reasoning of the Twenty-First Judicial District Court in Rose v. Ravalli Co., Cause No. DV-05-516, 2006 Mont. Dist. LEXIS 1072 (hereafter "Rose"). The District Court in Rose analyzed the history and interpretation of Mont. Code Ann. § 76-3-204 in detail, including the Attorney General Opinions cited here by the City. The Court also relied on the legislative history of Mont. Code Ann. § 76-3-204, which "indicates that the statute was amended to include 'whether existing or proposed' in order to exempt a single building containing duplexes or multi-family rental units from subdivision review." Rose at 14. The Court determined that "[t]he interpretation of § 76-3-204 as [including the rental of one or parts of multiple buildings] would render the portion of § 76-3-208 addressing subdivisions created by rent void of meaning." These factors, along with the requirement to interpret exemptions narrowly, led the Court to conclude that Mont. Code Ann. § 76-3-204 exempts only "a single building" from subdivision review. Rose at 8-14.

THEREFORE, IT IS MY OPINION:

1. The term "subdivision" under the Subdivision and Platting Act does not refer only to a division of land for the purpose of providing a "residential dwelling."
2. The provision of Mont. Code Ann. § 76-3-204 exempting from subdivision review the "sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement, whether existing or proposed" does not apply to the construction or conveyance of more than one building, structure or improvement on a single tract of record.

Sincerely,

/s/ Steve Bullock
STEVE BULLOCK
Attorney General

sb/cdt/jym

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 September 30, 2011. This table includes those rules adopted during the period October 1, 2011, through December 31, 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 September 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 2011/2012 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 December 2011 appear. Vacancies scheduled to appear from February 1, 2012, through April 30, 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 January 1, 2012.

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 DECEMBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Crime Control (Justice)			
Commissioner Mike Anderson Havre Qualifications (if required): public representative	Governor	reappointed	12/13/2011 1/1/2013
Board of Investments (Commerce)			
Mr. Bob Bugni East Helena Qualifications (if required): representative of the Public Employees	Governor	McKittrick	12/13/2011 1/1/2013
Board of Outfitters (Labor and Industry)			
Rep. Carol Gibson Billings Qualifications (if required): sportsperson	Governor	reappointed	12/14/2011 10/1/2014
Mr. Tim Linehan Troy Qualifications (if required): sportsperson	Governor	reappointed	12/14/2011 10/1/2014
Mr. John R. Redman Sidney Qualifications (if required): public representative	Governor	reappointed	12/14/2011 10/1/2014
Mr. Hugo Tureck Coffee Creek Qualifications (if required): sportsperson	Governor	Sather	12/14/2011 10/1/2014

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Speech-Language Pathologists and Audiologists (Labor and Industry)			
Ms. Lynn Harris Missoula Qualifications (if required): audiologist	Governor	reappointed	12/13/2011 12/31/2014
Ms. Tina Hoagland Billings Qualifications (if required): audiologist	Governor	reappointed	12/13/2011 12/31/2014
Clinical Laboratory Science Practitioners (Labor and Industry)			
Mr. Carl Donovan Great Falls Qualifications (if required): public representative	Governor	Staffanson	12/14/2011 4/16/2015
Ms. Sarah Kolar Lewistown Qualifications (if required): clinical laboratory science practitioner	Governor	Shively	12/14/2011 4/16/2015
Ms. Vicki Rice Helena Qualifications (if required): clinical laboratory science practitioner	Governor	Henderson	12/14/2011 4/16/2015
Future Fisheries Review Panel (Fish, Wildlife and Parks Department)			
Mr. Rick Arnold Bozeman Qualifications (if required): licensed angler	Governor	not listed	12/14/2011 7/1/2013

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Future Fisheries Review Panel (Fish, Wildlife and Parks Department) cont.			
Mr. Corey Fisher Missoula Qualifications (if required): licensed angler	Governor	not listed	12/14/2011 7/1/2013
Mr. Gary Frank Missoula Qualifications (if required): silvicultrist	Governor	not listed	12/14/2011 7/1/2013
Mr. William Gavin Bozeman Qualifications (if required): restoration professional	Governor	not listed	12/14/2011 7/1/2013
Mr. Levi Luoma Red Lodge Qualifications (if required): high school student	Governor	not listed	12/14/2011 7/1/2013
Ms. Ann Schwend Helena Qualifications (if required): Conservation District representative	Governor	not listed	12/14/2011 7/1/2013
Information Technology Board (Governor)			
Rep. Dan Villa Anaconda Qualifications (if required): Budget Director	Governor	Ewer	12/1/2011 0/0/0

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Heritage Preservation and Development Commission (Commerce)			
Dr. Timothy Lehman Billings	Governor	Womack	12/13/2011 5/23/2014
Qualifications (if required): Montana historian			
Montana Noxious Weed Management Advisory Council (Agriculture)			
Mr. Jim Olivarez Missoula	Director	Myllymaki	12/15/2011 6/30/2013
Qualifications (if required): representative of consumer group			
Private Lands/Public Wildlife Council (Fish, Wildlife and Parks Department)			
Mr. Jack Billingsley Glasgow	Governor	reappointed	12/14/2011 7/1/2013
Qualifications (if required): outfitter			
Mr. Joe Cohenour East Helena	Governor	reappointed	12/14/2011 7/1/2013
Qualifications (if required): sportsperson			
Ms. Kathy Hadley Deer Lodge	Governor	reappointed	12/14/2011 7/1/2013
Qualifications (if required): landowner			
Commissioner Chris King Winnett	Governor	reappointed	12/14/2011 7/1/2013
Qualifications (if required): landowner			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2011

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Private Lands/Public Wildlife Council (Fish, Wildlife and Parks Department) cont.			
Mr. Alex Nixon Roberts	Governor	Harmon	12/14/2011 7/1/2013
Qualifications (if required): outfitter			
Mr. Mike Penfold Billings	Governor	reappointed	12/14/2011 7/1/2013
Qualifications (if required): sportsperson			
Rep. Bob Ream Helena	Governor	reappointed	12/14/2011 7/1/2013
Qualifications (if required): Fish, Wildlife and Parks Commissioner			
Rail Service Competition (Transportation)			
Ms. Carla Allen Denton	Governor	reappointed	12/13/2011 1/1/2015
Qualifications (if required): having knowledge of class II railroads			
Mr. Walt Ainsworth Helena	Governor	reappointed	12/13/2011 1/1/2015
Qualifications (if required): having knowledge of the trucking industry			
Mr. Russell Hobbs Columbia Falls	Governor	reappointed	12/13/2011 1/1/2015
Qualifications (if required): having knowledge of transportation for the wood products industry			

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects and Landscape Architects (Labor and Industry)		
Mr. James G. Shepard, Billings Qualifications (if required): registered architect with three years continuous practice	Governor	3/27/2012
Mr. Dale Nelson, Ronan Qualifications (if required): registered architect with three years continuous practice	Governor	3/27/2012
Board of Dentistry (Labor and Industry)		
Rep. James Madison, Jefferson City Qualifications (if required): public representative over 55 years of age	Governor	3/29/2012
Mr. Cliff Christenot, Libby Qualifications (if required): denturist	Governor	3/29/2012
Dr. David Johnson, Great Falls Qualifications (if required): dentist	Governor	3/29/2012
Ms. Carol Price, Clancy Qualifications (if required): dental hygienist	Governor	3/29/2012
Board of Hail Insurance (Agriculture)		
Ms. Trudy Laas Skari, Chester Qualifications (if required): public member	Governor	4/18/2012

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Optometry (Labor and Industry) Mr. Randall Hoch, Lewistown Qualifications (if required): registered optometrist</p>	Governor	4/3/2012
<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>Clinical Laboratory Science Practitioners (Labor and Industry) Ms. Wendy Palmer, Raynesford Qualifications (if required): clinical laboratory science practitioner</p>	Governor	4/16/2012
<p>Family Support Services Advisory Council (Public Health and Human Services) Ms. Sylvia Danforth, Miles City Qualifications (if required): provider representative</p>	Governor	4/9/2012
<p>Mr. Theodore Maloney, Helena Qualifications (if required): personnel preparation</p>	Governor	4/9/2012
<p>Ms. Sandi Marisdotter, Helena Qualifications (if required): provider representative</p>	Governor	4/9/2012
<p>Ms. Cristin Volinkaty, Missoula Qualifications (if required): provider representative</p>	Governor	4/9/2012

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont.		
Ms. Mary Jane Standaert, Helena Qualifications (if required): Head Start/Early Head Start representative	Governor	4/9/2012
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): language therapist	Governor	4/9/2012
Ms. Sandy McGennis, Great Falls Qualifications (if required): representative of the School for the Deaf and Blind	Governor	4/9/2012
Ms. Novelene Martin, Miles City Qualifications (if required): parent representative	Governor	4/9/2012
Mr. Ronald Herman, Helena Qualifications (if required): agency representative	Governor	4/9/2012
Ms. Diana Colsgrove, Eureka Qualifications (if required): parent representative	Governor	4/9/2012
Ms. Laurie Frank, Simms Qualifications (if required): parent representative	Governor	4/9/2012
Ms. Priscilla Halcro, Great Falls Qualifications (if required): family support specialist	Governor	4/9/2012

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Family Support Services Advisory Council (Public Health and Human Services) cont. Ms. Paula Sherwood, Missoula Qualifications (if required): agency representative	Governor	4/9/2012
Mr. Joseph Miller, Big Sky Qualifications (if required): parent representative	Governor	4/9/2012
Mr. Verne Beffert, Livingston Qualifications (if required): special education representative	Governor	4/9/2012
Ms. Denise Brunett, Helena Qualifications (if required): agency representative	Governor	4/9/2012
Ms. Dawn Piazzzi, Helena Qualifications (if required): agency representative	Governor	4/9/2012
Ms. Beverly Hertweck, Helena Qualifications (if required): agency representative	Governor	4/9/2012
Ms. Danni McCarthy, Helena Qualifications (if required): agency representative	Governor	4/9/2012
Montana Arts Council (Arts Council) Ms. Cynthia Andrus, Bozeman Qualifications (if required): public representative	Governor	2/1/2012

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Arts Council (Arts Council) cont. Mr. Allen Secher, Whitefish Qualifications (if required): public representative	Governor	2/1/2012
Ms. Judy Ulrich, Dillon Qualifications (if required): public representative	Governor	2/1/2012
Mr. Rick Newby, Helena Qualifications (if required): public representative	Governor	2/1/2012
Ms. Jane Deschner, Billings Qualifications (if required): public representative	Governor	2/1/2012
Montana Election and Technology Advisory Council (Secretary of State) Ms. Bonnie Ramey, Boulder Qualifications (if required): Jefferson County Clerk & Recorder	Secretary of State	4/26/2012
Ms. Vickie Zeier, Missoula Qualifications (if required): Missoula County Clerk and Recorder	Secretary of State	4/26/2012
Ms. Janice Hoppes, Conrad Qualifications (if required): Pondera County Clerk and Recorder	Secretary of State	4/26/2012

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Election and Technology Advisory Council (Secretary of State) cont.		
Ms. Sandra Boardman, Chinook Qualifications (if required): Blaine County Clerk and Recorder	Secretary of State	4/26/2012
Ms. Kathie Newgard, Polson Qualifications (if required): Lake County Election Administrator	Secretary of State	4/26/2012
Ms. Jeri Custer, Forsyth Qualifications (if required): Rosebud County Clerk and Recorder	Secretary of State	4/26/2012
Ms. Charlotte Mills, Bozeman Qualifications (if required): Gallatin County Clerk and Recorder	Secretary of State	4/26/2012
Mr. Bret Rutherford, Billings Qualifications (if required): Yellowstone County Election Administrator	Secretary of State	4/26/2012
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

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Public Employees Retirement Board (Administration) Mr. John Nielsen, Glendive Qualifications (if required): public employee active in retirement system</p>	Governor	4/1/2012
<p>UM Western Local Executive Board (University System) Commissioner Garth Haugland, Dillon Qualifications (if required): public representative</p>	Governor	4/15/2012
<p>Youth Justice Council (Justice) Rep. Rosalie "Rosie" Buzzas, Missoula Qualifications (if required): having competency in addressing problems facing youth</p>	Governor	2/9/2012
<p>Judge Pedro Hernandez, Billings Qualifications (if required): representative of law enforcement</p>	Governor	2/9/2012
<p>Mr. Ted Lechner, Billings Qualifications (if required): having competency in addressing problems facing youth</p>	Governor	2/9/2012
<p>Mr. Richard T. Montgomery, Helena Qualifications (if required): having competency in addressing problems facing youth</p>	Governor	2/9/2012
<p>Ms. Katie Yother Champion, Bozeman Qualifications (if required): youth representative</p>	Governor	2/9/2012

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont.		
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
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, Harbin Qualifications (if required): representative of law enforcement	Governor	2/9/2012

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2012 THROUGH APRIL 30, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont.		
Mr. Glen Grander, 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
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