

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.183.1001 form of corner)
records, 24.183.1104 uniform)
standards for certificates of survey,)
and 24.183.1107 uniform standards)
for final subdivision plats)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On September 27, 2012, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors (board) no later than 5:00 p.m., on September 21, 2012, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdpels@mt.gov.

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

24.183.1001 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1) The form for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) has been approved by the ~~board of professional engineers and land surveyors~~ Board of Professional Engineers and Professional Land Surveyors. The approved version of the form for ~~the public land survey system~~ was adopted by the board on ~~July 1, 1981~~ February 2, 2012, and the approved version of the form for filing under the survey of record index was adopted on February 20, 2004. Blank corner record forms can be obtained from the Montana Association of Registered Land Surveyors, P.O. Box 359, Columbia Falls, Montana 59912, by contacting the association directly at (406) 892-4579, or on the internet at www.marls.com.

(2) remains the same.

(a) A a description or quotation of those portions of the original or subsequent record, which were used in evaluating the corner position;

(i) remains the same.

(ii) The original record for nongovernment surveys will usually be subdivision plats, certificates of survey, or other surveys of record.

(iii) Subsequent record can come from sources such as previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data help support the reestablished corner position, because they clearly show on what history the surveyor based the corner position. In some cases, however, the record may be unknown or not pertinent. A statement to that effect, if applicable, must appear on the corner record.

(b) A a description of the original or subsequent record evidence found that locates the corner position;

(i) through (iii) remain the same.

(c) A a listing of all details about the corner and its location, which will help exclusively identify the corner position, including the size and type of monument and accessory, how marked if not shown in sketch, and distinguishing topographic calls, which help locate the corner. In many cases, instructions on how to find the corner should be included;

(i) and (ii) remain the same.

(d) A a sketch of the corner to show how a found or set corner is marked or show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries. For corners which were first shown on subdivision plats or on recorded or filed surveys, enough information must be shown so that the corner can be identified;

(e) ~~The~~ the surveyor who performed or directed the ~~field work~~ fieldwork, which is depicted on the corner record, shall sign and affix the licensee's seal in the certification;

(i) remains the same.

(ii) The employer blank is optional, but useful, in tracking down original field note data or adjacent record if, in the future, questions arise about the corner. The name and signature of the ground party chief is also optional information on the record form.

(f) ~~For~~ for public land survey system corners, the cross index at the bottom of the page must be completed by the surveyor. Only the single township and range index where the corner is filed is to be completed.

(i) remains the same.

AUTH: 37-67-202, 70-22-107, MCA

IMP: 70-22-107, MCA

REASON: The board determined it is reasonably necessary to amend this rule to reflect the most current version of the corner recordation form as approved by the board. The Montana Association of Registered Land Surveyors initially requested that the board review this form and add more specific instructions, similar to those on the Public Land Survey System Corner Record form. The board has also amended the form to clarify the possible number of parcels and corners. Other

nonsubstantive amendments are proposed to comply with the formatting and grammar requirements of the Secretary of State.

24.183.1104 UNIFORM STANDARDS FOR CERTIFICATES OF SURVEY

(1) A certificate of survey ~~may not be filed by a county clerk and recorder unless it complies~~ must comply with the following requirements:

(a) A certificate of survey must be legibly drawn with permanent black ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches, or 24 inches by 36 inches, ~~overall to include a 1 1/2 inch margin on the binding side~~ with a minimum 1/2-inch margin on all sides, or as required by the filing office.

(b) One ~~signed copy on cloth-backed material or original~~ original on 3 three mil or heavier matte stable-base polyester film or equivalent and/or one ~~signed reproducible copy~~ original on a ~~stable-base polyester film~~ 24# white bond paper or equivalent must be submitted, or on such medium as required by the filing office.

(c) If more than one sheet must be used to adequately depict the land surveyed, each sheet must show the number of that sheet and the total number of sheets included. All certifications must be placed ~~or referred to~~ on sheet number one sheet of the certificate of survey.

(d) A certificate of survey must show or contain ~~on its face or on separate sheets referred to on its face~~ the following information: ~~The surveyor may, at his or her discretion, provide additional information regarding the survey.~~

(i) A a title or title block, including the quarter-section, section, township, range, principal meridian, and county, and, if applicable, city or town in which the surveyed land is located. Except as provided in (1)(f)(v), a certificate of survey must not ~~bear~~ contain the title "plat," "subdivision," or any title other than "Certificate of Survey-";

(ii) ~~The~~ the name(s) of the person(s) who commissioned the survey, the name(s) of the owner(s) of the land surveyed, if other than the person(s) commissioning the survey, and the names of any adjoining ~~platted subdivisions~~ plats, and the numbers of any adjoining certificates of survey previously filed;

(iii) ~~The~~ the date the survey was completed and a brief explanation of why the certificate of survey was prepared, such as to create a new parcel, retrace a section line, or retrace an existing parcel of land;

(iv) A a north arrow;

(v) A a scale bar. ~~{The scale~~ of the certificate of survey must be sufficient to legibly represent the required information and data on the certificate of survey;

(vi) ~~The~~ the location of, and other information relating to all monuments found, set, reset, replaced, or removed as required by ARM 24.183.1101(1)(c);

(A) If additional monuments are to be set after the certificate of survey is filed, the location of these monuments must be shown by a distinct symbol, and the certificate of survey must ~~bear~~ contain a certification by the land surveyor as to the reason the monuments have not been set and the date by which they will be set.

(B) All monuments found during ~~a retracement~~ the survey that influenced the position of any corner or boundary indicated on the certificate of survey must be clearly shown as required by ARM 24.183.1101(1)(c).

(C) Witness and reference monuments must be clearly shown.

(vii) ~~The~~ the location of any section ~~corners~~ corner or corners of divisions of sections the land surveyor deems to be pertinent to the survey, or that was used as a control in the survey;

(viii) ~~Witness and reference monuments and basis of bearings~~ bearing. For purposes of this rule, the term "basis of ~~bearings~~ bearing" means the land surveyor's statement as to the origin of the bearings shown ~~in~~ on the certificate of survey. ~~The~~ If the basis of bearings bearing(s) may refer refers to a particular line between two previously monumented points in a previously filed survey document, then the two previously monumented points must be shown and described on the certificate of survey; the line marked by the two previously monumented points must be labeled "basis of bearing," and the previously filed survey document name or number must be cited in the land surveyor's statement as to the origin of the bearing(s). If the certificate of survey shows true bearings, the basis of ~~bearings~~ bearing must describe the method by which these true bearings were determined;

(ix) ~~The~~ the bearings, distances, and curve data of all boundary lines, and all control or pertinent lines used to determine the boundaries of the parcel(s) surveyed. If the parcel surveyed is bounded by an irregular shoreline or a body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given;

(A) The courses along a meander line are shown solely to provide a basis for calculating the ~~acreage~~ area of a parcel that has one or more riparian boundaries as the parcel existed at the time of survey.

(B) For purposes of this rule, a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(C) If a boundary, control, or pertinent line contains multiple segments of the whole, then the overall distance must be shown, and each segment must at least include distance.

(x) ~~Data~~ data on all curves sufficient to enable the reestablishment of the curves on the ground. For circular curves, ~~these~~ the data must at least include radius and arc length, and either delta angle, radial bearings, or chord bearing and distance. All nontangent points of intersection on the curve must show either the bearings of radial lines or chord length and bearing. Nontangent curves must be so labeled; For nontangent curves, which must be so labeled, the certificate of survey must include the bearings of radial lines or chord length and bearing.

(xi) ~~Lengths~~ lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically;

(xii) at least one record measurement reference, if available, must be shown;

~~(xii)~~ (xiii) A narrative legal description of the parcel parcel(s) surveyed. The land surveyor, at his or her discretion, may choose the form of the narrative legal description as follows:

(A) If the parcel surveyed is either an aliquot part of a U.S. government section or a U.S. government lot, ~~the information required by this subsection is~~ narrative legal description may be the aliquot part or the government lot description of the parcel;

~~(B) If the certificate of survey depicts the retracement or division of a parcel one or lot that is more parcels shown on a previously filed certificate of survey or subdivision plat, the information required by this subsection is narrative legal description may be the number or name of the previously filed certificate of survey or plat and the parcel or lot number of the parcel(s) previously surveyed; or~~

~~(C) If the certificate of survey depicts the retracement of one or more parcels shown on a previously filed certificate of survey, plat, or amended plat, the narrative legal description may be the number of the previously filed certificate of survey or the name of the previously filed plat or amended plat, and the parcel number of the parcel(s) previously surveyed;~~

~~(D) If the parcel surveyed does not fall within (1)(d)(xii)(A) or (B), above survey creates or retraces one or more parcels, the information narrative legal description required by this subsection is may be either the metes-and-bounds description of each individual parcel created by the survey or the metes-and-bounds description of the perimeter boundary of the parcel(s) surveyed;~~

~~(E) If the certificate of survey establishes the boundary of a parcel containing one or more interior parcels, the information required by this subsection is the legal description of the encompassing parcel.~~

~~(F) If the narrative legal description does not fall within (1)(d)(xiii)(A), (B), or (C), then the narrative legal description required by this subsection must conform with (1)(d)(xiii)(D);~~

~~(G) The requirement of this rule does not apply to certificates of survey that depict a partial retracement of the boundaries of an existing parcel or establish the location of lines or corners that control the location of an existing parcel;~~

~~(H) If the narrative legal description is metes-and-bounds, the point of beginning, which is also the point of closure of the legal description of the parcel surveyed, must be labeled "Point of Beginning"; and~~

~~(I) Except as provided by (1)(f)(iv), all parcels created or retraced by the certificate of survey, designated by number or letter, and the dimensions bearings, distances, curve data, and area of each parcel, except as provided in (1)(f)(iii). (Excepted parcels must be marked "Not included in this survey.") If a parcel created by the certificate of survey is identifiable as a 1/32 or larger aliquot part of a U.S. government section or as a U.S. government lot, it may be designated by number or letter or by its aliquot part or government lot identification;~~

~~(J) The location, bearings, distances, and curve data of any easement that will be created by reference to the certificate of survey;~~

~~(K) The dated signature and the seal of the land surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor land surveyor's signature certifies that the certificate of survey has been prepared in conformance with the applicable sections of the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act. act;~~

~~(L) A memorandum of any oaths administered under 76-3-405, MCA;~~

~~(M) if applicable, the certificate of the examining land surveyor; and~~

~~(N) Space for the county clerk and recorder's filing information.~~

(e) Certificates of survey that do not represent a division or aggregation of land, such as those depicting the retracement of an existing parcel and those prepared for informational purposes, must ~~bear~~ contain a statement as to their purpose and must meet applicable requirements of this rule for form and content. If the purpose of a certificate of survey is stated as a retracement or partial retracement, and if multiple tracts of record contained within the parcel's perimeter boundary on the certificate of survey are not individually shown, then the certificate of survey does not expunge the tracts of record, unless it conforms to (1)(f)(iv) and contains the acknowledged certificate of the property owner(s), citing the applicable exemption in its entirety.

(f) Procedures for divisions of land exempted from ~~public~~ review as subdivisions. If one or more parcels on a certificate of survey is created by an exemption from subdivision review under 76-3-207, MCA, then, except as provided in (1)(f)(iii) and (iv), the certificate of survey must establish the boundaries of the exemption parcel(s). The certificate of survey is not required to establish, but may establish, the exterior boundaries of the remaining portion of the parent tract of land. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to identify the location and extent of the exemption parcel to be created. Unsurveyed portions of the parent tract of land must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY". The certificate of survey must contain the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and cite the applicable exemption in its entirety. ~~Certificates~~ The certificate of survey for divisions of land meeting the criteria set out in ~~76-3-207, MCA,~~ must meet the following requirements:

~~(i) A certificate of survey of a division of land that would otherwise be a subdivision but that is exempted from subdivision review under 76-3-207, MCA, may not be filed by the county clerk and recorder unless it bears the acknowledged certificate of the property owner stating that the division of land is exempt from review as a subdivision and citing the applicable exemption.~~

~~(ii) (i)~~ If the exemption relied upon requires that the property owner enter into a covenant running with the land, the certificate of survey may not be filed, unless it ~~bears~~ shows or contains a signed and acknowledged recitation of the covenant in its entirety.

~~(iii) (ii)~~ If a certificate of survey invokes the exemption for ~~gifts and sales~~ gift(s) or sale(s) to members of the landowner's immediate family, the certificate of survey must indicate the name of the proposed grantee, the relationship of the grantee to the landowner, and the parcel to be conveyed to the grantee.

~~(iv) (iii)~~ If a certificate of survey invokes the exemption for the relocation of common boundary ~~lines~~ line(s):

(A) The certificate of survey must ~~bear~~ contain the signatures of all landowners whose ~~parcels~~ tracts of record will be altered by the proposed relocation. The certificate of survey must show that the exemption was used only to change the location of ~~or eliminate~~ a boundary line dividing or lines common to two or more ~~parcels~~ tracts of record, and must clearly distinguish the prior boundary location or locations (shown, for example, by a dashed or broken ~~line or~~ line(s) with a notation)

from the new boundary location or locations (shown, for example, by a solid line or line(s) with a notation);

(B) The certificate of survey must show the boundaries of the area that is being removed from one ~~parcel~~ tract of record and joined with another ~~parcel~~ tract of record. The certificate of survey ~~may, but is not required to establish,~~ but may establish, the exterior boundaries of the resulting ~~parcels~~ tracts of record. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient to clearly identify both the location and the extent of the boundary relocation; Unsurveyed portions of the tracts of record must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY"; and

(C) ~~If a boundary line will be completely eliminated, the certificate must establish the boundary of the resulting parcel.~~ The certificate of survey must contain the following notation: "The area that is being removed from one tract of record and joined with another tract of record is not itself a tract of record. Said area shall not be available as a reference legal description in any subsequent real property transfer after the initial transfer associated with the [certificate of survey or amended plat] on which said area is described, unless said area is included with or excluded from adjoining tracts of record."

(iv) If a certificate of survey invokes the exemption for aggregation of parcels or lots:

(A) The certificate of survey must contain the signatures of all landowners whose tracts of record will be altered by the proposed aggregation. The certificate of survey must show that the exemption was used only to eliminate a boundary line or lines common to two or more tracts of record, and must clearly distinguish the prior boundary location or locations (shown for example by dashed or broken line(s) with a notation) from the new perimeter boundary location or locations (shown for example by solid line(s) with a notation); and

(B) The certificate of survey must establish the perimeter boundary of the resulting tract(s) of record.

(v) A survey document that modifies lots ~~in~~ on a ~~platted and filed subdivision plat~~ and invokes an exemption from subdivision review under 76-3-201 or 76-3-207(1)(d), ~~or (e), or (f),~~ MCA, must be entitled "amended plat of ~~the~~ (lot, block, and name of subdivision being amended)," but for all other purposes ~~is to be regarded as a certificate~~ must comply with the requirements for form and descriptive content of certificates of survey contained in this rule. ~~The document must contain a statement signed by the property owner that approval of the local government body is not required and citing the applicable exemption.~~

(vi) If the certificate of survey invokes an exemption from subdivision review under 76-3-207, MCA, the certificate of survey must ~~bear,~~ contain or be accompanied by; a certification by the county treasurer that all real property taxes and special assessments assessed and levied on the surveyed land have been paid.

(vii) For purposes of ~~(4)(f)~~ this rule, when the parcel of land for which an exemption from a subdivision review is claimed is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" mean the seller of the ~~parcel~~ land under the contract-for-deed.

(g) The land surveyor, at his or her discretion, may provide additional information on the certificate of survey regarding the survey.

~~(g)~~ (h) Procedures for filing certificates of survey of divisions of land entirely exempted from the requirements of the Montana Subdivision and Platting Act. The divisions of land described in 76-3-201, 76-3-205, and 76-3-209, MCA, and divisions of federally owned land made by a United States U.S. government agency are not required to be surveyed, nor must a certificate of survey or subdivision plat showing these divisions be filed with the clerk and recorder. A However, a certificate of survey of one of these divisions may, however, be filed with the clerk and recorder if the certificate of survey meets the requirements for form and content for certificates of survey contained in this rule, and bears contains a certificate of all the surveyor performing the survey landowners citing the applicable exemption from the Act act in its entirety, or, when applicable, that the land surveyed is owned by the federal government. The certificate of survey must establish the boundaries of the exemption parcel(s). The certificate of survey is not required to establish, but may establish, the exterior boundaries of the remaining portion of the parent tract of land. However, the certificate of survey must show portions of the existing unchanged boundaries sufficient as to identify the location and extent of the exemption parcel to be created. Unsurveyed portions of the parent tract of land must be labeled, "NOT A PART OF THIS CERTIFICATE OF SURVEY" or "NOT INCLUDED IN THIS CERTIFICATE OF SURVEY".

AUTH: 37-67-202, 76-3-403, 76-3-411, MCA

IMP: 37-67-314, 76-3-101 through 76-3-411, 76-3-403, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ARM 24.183.1107 to separate the legal boundary elements and related plat content utilized by licensed professional land surveyors from the land use elements imposed during subdivision and exemption reviews by planning authorities. In 2007, the board initially considered concerns of planners, clerks and recorders, and county commissioners regarding some counties' requirement that land surveyors provide what was believed to be excessive information on the face of plats. Following extensive review and discussion, the board determined the proposed amendments are necessary to provide consistency among county governments regarding information placed on certificates of survey and subdivision plats.

The board proposed amending these two rules in late 2011, but did not amend them after receiving numerous comments and concerns. The amendments proposed now are the culmination of five months of board meetings with interested parties since that rulemaking. As well, the amendments take into consideration the concerns of the commenters in the previous rulemaking, as well as all input during the recent meetings.

Implementation and authority cites are being amended to provide the complete sources of the board's rulemaking authority and to accurately reflect all statutes implemented through these two rules.

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1) A final subdivision plat ~~may not be approved by the governing body or filed by the county clerk and recorder unless it complies~~ must comply with the following requirements:

(a) the plat complies with the requirements contained in (2);

(b) the plat includes a conditions of approval sheet(s) that complies with the requirements contained in (4); and

(c) the plat is accompanied by documents listed in (5).

(2) A plat must comply with the following requirements:

(a) ~~Final subdivision plats~~ A plat must be legibly drawn with permanent black ink or printed or reproduced by a process guaranteeing a permanent record and must be 18 inches by 24 inches or 24 inches by 36 inches, ~~overall to include a 1-1/2-inch margin on the binding side~~ with a minimum 1/2-inch margin on all sides, or as required by the filing office.

(b) ~~One signed copy on cloth-backed material or original on 3 three mil or heavier matte stable-base polyester film or equivalent and/or one signed reproducible copy original on a stable-base polyester film 24# white bond paper or equivalent~~ must be submitted, or on such medium as required by the filing office.

(c) If more than one sheet must be used to adequately depict the land ~~subdivided~~ surveyed, each sheet must show the number of that sheet and the total number of sheets included. ~~All~~ Except as provided in (4)(b), all certifications must be placed ~~or referred to on one sheet~~ number one of the plat.

(d) A survey document that results in an increase in the number of lots or modifies six or more lots on a filed subdivision plat must be entitled "amended plat of (lot, block, and name of subdivision being amended)," and unless it is exempt from subdivision review by 76-3-201 or 76-3-207(1)(d), ~~or (e), or (f), MCA, may not be filed with the county clerk and recorder unless it meets~~ must meet the filing requirements for final subdivision plats specified in this rule.

~~(2) (e) A final plat submitted for approval must show or contain, on its face or on separate sheets referred to on the plat, the following information: The surveyor may, at his or her discretion, provide additional information regarding the survey.~~

(a) (i) A title or title block, indicating including the quarter-section, section, township, range, principal meridian, county, and, if applicable, city or town, in which the subdivision is located. The title of the plat must contain the words "plat" and either "subdivision" or "addition";

(b) (ii) The the name(s) of the person(s) who commissioned the survey, and the name(s) of the owner(s) of the land to be subdivided, if other than the person(s) commissioning the survey, the names of any adjoining platted subdivisions plats, and the numbers of any adjoining certificates of survey previously filed;

~~(c) (iii) A north arrow;~~

(d) (iv) A scale bar. (The scale of the plat must be sufficient to legibly represent the required information and data on the plat.);

~~(e) (v) The the location of, and other information relating to all monuments found, set, reset, replaced, or removed as required by ARM 24.183.1101(1)(c);~~

(f) (A) If additional monuments are to be set after the plat is filed, the location of these monuments must be shown by a distinct symbol, and the plat must bear contain a certification by the land surveyor as to the reason the monuments have not been set and the date by which they will be set.

(ii) (B) All monuments found during a ~~retracement~~ the survey that influenced the position of any corner or boundary indicated on the plat must be clearly shown as required by ARM 24.183.1101(1)(c).

(C) Witness and reference monuments must be clearly shown.

~~(f) (vi) The~~ the location of any section ~~corners~~ corner or corners of divisions of sections that the land surveyor deems to be pertinent to the survey or was used as control in the survey;

~~(g) (vii) Witness and reference monuments and basis of bearings~~ bearing. For purposes of this rule, the term "basis of ~~bearings~~ bearing" means the land surveyor's statement as to the origin of the bearings shown on the plat. ~~The~~ If the basis of ~~bearings~~ bearing(s) refers to a particular line between two previously monumented points in a previously filed survey document, then the two previously monumented points must be shown and described on the plat; the line marked by the two previously monumented points must be labeled "basis of bearing," and the previously filed survey document name or number must be cited in the land surveyor's statement as to the origin of the bearing(s). If the plat shows true bearings, the basis of ~~bearings~~ bearing must describe the method by which these true bearings were determined;

~~(h) (viii) The~~ the bearings, distances, and curve data of all boundary lines and all control or pertinent lines used to determine the boundaries of the subdivision. If the subdivision is bounded by an irregular shoreline or a body of water that is a riparian boundary, the bearings and distances of a meander traverse generally paralleling the riparian boundary must be given;

~~(i) (A)~~ (A) The courses along a meander line are shown solely to provide a basis for calculating the acreage area of a parcel with that has one or more riparian boundaries as the parcel existed at the time of survey.

~~(ii) (B)~~ (B) For purposes of ~~these regulations~~ this rule, a line that indicates a fixed boundary of a parcel is not a "meander" or "meander line" and may not be designated as one.

(C) If a boundary, control, or pertinent line contains multiple segments of the whole, then the overall distance must be shown and each segment must at least include distance.

~~(i) (ix) Data~~ data on all curves sufficient to enable the ~~re-establishment~~ reestablishment of the curves on the ground. For circular curves, ~~these~~ the data must at least include radius and arc length, and either the delta angle, radial bearings or chord bearing, and distance. All nontangent points of intersection on the curve must show either the bearings of radial lines or chord length and bearing. ~~For non-tangent~~ Nontangent curves, ~~which~~ must be so labeled, ~~the plat must include the bearings of radial lines or chord length and bearing;~~

~~(j) (x)~~ (x) Lengths lengths of all lines shown to at least tenths of a foot, and all angles and bearings shown to at least the nearest minute. Distance measurements must be stated in English units, but their metric equivalents, shown to the nearest hundredth of a meter, may be noted parenthetically;

(xi) at least one record measurement reference, if available, must be shown;

~~(k) The location of any section corners or corners of divisions of sections the surveyor deems to be pertinent to the subdivision.~~

~~(f) (xii) All all lots and blocks in the subdivision, designated by number, the dimensions bearings, distances, and curve data of each lot and block, the area of each lot, and the total acreage area of all lots. (Excepted parcels lands must be marked labeled "Not included in this subdivision NOT INCLUDED IN THIS SUBDIVISION" or "Not included in this plat, NOT INCLUDED IN THIS PLAT" as appropriate, and the bearings and lengths of these excepted boundaries must be shown.);~~

~~(m) (xiii) All all existing rights-of-way for streets, alleys, avenues, roads, and highways that adjoin or are within the boundaries of the subdivision; their names and widths (if ascertainable) from public records; (if ascertainable); and the bearings, distances, and area; curve data of their adjoining boundaries the width and purpose of all road rights-of-way and all other easements that will be created by the filing of the plat; and the names of all streets, roads and highways. If the existing right(s)-of-way is contained within the boundaries of the subdivision, then the area of the portion of the right(s)-of-way within the subdivision shall be shown;~~

~~(xiv) all rights-of-way for streets, alleys, avenues, roads, and highways that will be created by the filing of the plat; their names, widths, bearings, distances, curve data, and area;~~

~~(n) (xv) The except as provided in (2)(d)(xiii) and (xiv), the location, dimensions bearings, distances, curve data, and areas of all parks, common areas, and other grounds dedicated for public use;~~

~~(o) (xvi) The the total acreage area of the subdivision;~~

~~(p) (xvii) A a narrative legal description of the subdivision as follows: The land surveyor, at his or her discretion, may choose the form of the narrative legal description as follows:~~

~~(i) (A) If the parcel being land to be subdivided is either an aliquot part of a U.S. government section or a U.S. government lot, the information required by this subsection is narrative legal description may be the aliquot part or the government lot description of the parcel land; or~~

~~(ii) (B) If the plat depicts the division of a parcel one or lot that is more parcels shown on a previously filed certificate of survey or subdivision plat, the information required by this subsection is narrative legal description may be the number or name of the previously filed certificate of survey or name of the previously filed plat and the parcel number of the parcel or lot affected by the survey. parcel(s) previously surveyed;~~

~~(C) The narrative legal description may be the metes-and-bounds description of the perimeter boundary of the subdivision;~~

~~(iii) (D) If the parcel surveyed narrative legal description does not fall within (2)(p)(i)(e)(xvii)(A) or (ii)(B), above, the information narrative legal description required by this subsection is the metes-and-bounds description of the perimeter boundary of the subdivision; and~~

~~(iv) If the plat establishes the boundaries of a subdivision containing one or more interior parcels, the information required by this subsection is the legal description of the perimeter boundary of the subdivision.~~

~~(E) If the narrative legal description is metes-and-bounds, the point of beginning, which is also the point of closure of the legal description of the subdivision surveyed, must be labeled "Point of Beginning."~~

~~(q)~~ (xviii) The the dated signature and the seal of the land surveyor responsible for the survey. The affixing of this seal constitutes a certification by the surveyor land surveyor's signature certifies that the final plat has been prepared in conformance with the applicable sections of the Montana Subdivision and Platting Act (76-3-101 through 76-3-625, MCA) and the regulations adopted under that Act act. The land surveyor's signature and certification do not include certification of the conditions of approval sheet(s);

~~(r)~~ (xix) A a memorandum of any oaths administered under 76-3-405, MCA;

~~(s)~~ (xx) The the dated, signed, and acknowledged consent to the subdivision of the owner of the land being to be subdivided. For purposes of this rule, when the parcel of land proposed for subdivision is being conveyed under a contract-for-deed, the terms "property owner," "landowner," and "owner" and "owner of the land" refers to mean the seller of the land under the contract-for-deed;

~~(t)~~ (xxi) Certification certification by the governing body that the final subdivision plat is approved;

(xxii) if applicable, the landowner's certificate of dedication of streets, alleys, avenues, roads, highways, parks, playground easements, or other public improvements;

(xxiii) if applicable, or as required by subdivision regulations, the landowner(s)' certification statement(s) as follows:

(A) A statement that federal, state, and local plans, policies, regulations, and/or conditions of subdivision approval that may limit the use of the property, including the location, size, and use are shown on the conditions of approval sheet or as otherwise stated.

(B) A statement that buyers of property should ensure that they have obtained and reviewed all sheets of the plat and all documents recorded and filed in conjunction with the plat, and that buyers of property are strongly encouraged to contact the local planning department and become informed of any limitations on the use of the property prior to closing.

(C) A statement that all or part of the required public improvements have been installed and/or security requirements pursuant to 76-3-507, MCA, to secure the future construction of any remaining public improvements to be installed.

(xxiv) if applicable, a certificate of the governing body accepting any dedicated land, easements, or improvements;

(xxv) if applicable, the certificate of the examining land surveyor;

~~(u)~~ (xxvi) Space space for the clerk and recorder's filing information; and

(xxvii) a minimum two-inch by four-inch blank space below the clerk and recorder's filing information for the recording numbers of the documents listed in (5).

(f) The land surveyor, at his or her discretion, may provide additional information on the plat regarding the survey.

(3) The following documents must appear on the face of or accompany the approved final plat when it is presented to the county clerk and recorder for filing certifications of final plat approval must appear on the plat or on the conditions of approval sheet as contained in (4), or recorded or filed as contained in (5) of these rules:

~~(a) If applicable, the owner's certificate of dedication of streets, parks, playground easements or other public improvements.~~

~~(b) If applicable, a certificate of the governing body expressly accepting any dedicated land, easements or improvements. An acceptance of a dedication is ineffective without this certification.~~

~~(c) A certificate of a title abstractor showing the names of the owners of record of the land to be subdivided and the names of any lien holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.~~

~~(d) Copies of any covenants or deed restrictions relating to the subdivision.~~

~~(e) If applicable, a certificate from the state department of environmental quality stating that it has approved the plans and specifications for water supply and sanitary facilities.~~

~~(f) A certificate from the subdivider indicating which required public improvements have been installed and a copy of any subdivision improvements agreement securing the future construction of any additional public improvement to be installed.~~

~~(g) Unless otherwise provided by local subdivision regulations, copies of final plans, profiles, grades and specifications for improvements, including a complete grading and drainage plan, with the certification of a registered professional engineer that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed or file them with a government official other than the county clerk and recorder, or both.~~

~~(h) If applicable, the certificate of the examining land surveyor.~~

~~(i) If a street created by the plat will intersect with a state highway, a copy of the state highway access or encroachment permit.~~

~~(j) (a) The a certification of by the county treasurer that all real property taxes and special assessments assessed and levied on the land to be subdivided have been paid; and~~

~~(b) if applicable, certification of the local health officer having jurisdiction.~~

~~(4) If applicable, a sheet(s) of the plat prepared by the landowner(s) or their representative(s) depicting conformance with subdivision application approval shall be entitled "conditions of approval of [insert name of subdivision]," with a title block, including the quarter-section, section, township, range, principal meridian, county, and if applicable, city or town in which the subdivision is located, and shall contain:~~

~~(a) any text and/or graphic representations of requirements by the governing body for final plat approval, including, but not limited to, setbacks from streams or riparian areas, floodplain boundaries, no-build areas, building envelopes, or the use of particular parcels;~~

~~(b) a certification statement by the landowner that the text and/or graphics shown on the conditions of approval sheet(s) represent(s) requirements by the governing body for final plat approval and that all conditions of subdivision application have been satisfied; and~~

~~(c) a notation stating that the information shown is current as of the date of the certification required in (4)(b), and that changes to any land use restrictions or~~

encumbrances may be made by amendments to covenants, zoning regulations, easements, or other documents as allowed by law or by local regulations.

(5) If applicable, the following documents, as specified by local government, shall accompany the approved final plat and shall be recorded or filed with the plat as specified by the clerk and recorder, and the recording or filing number(s) for each document may be written on the plat by the clerk and recorder:

(a) a title report or certificate of a title abstractor showing the names of the owners of record of the land to be subdivided, and the names of any lien holders or claimants of record against the land, and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land;

(b) any covenants or deed restrictions relating to the subdivision;

(c) for lots less than 20 acres in size, exclusive of public roadways, a certification from the State Department of Environmental Quality stating that it has approved the plans and specifications for water supply and sanitary facilities pursuant to 76-4-104(2), MCA;

(d) if required by the governing body, for lots of 20 acres or greater in size, written documentation that the subdivider has demonstrated that there is an adequate water source and at least one area for a septic system and replacement drainfield for each lot in accordance with 76-3-604(8)(b), MCA;

(e) a copy of any security requirements, pursuant to 76-3-507, MCA, securing the future construction of any remaining public improvements to be installed;

(f) unless otherwise provided in local subdivision regulations, copies of final plans, profiles, grades, and specifications for improvements, including a complete grading and drainage plan with the certification of a professional engineer, that all required improvements which have been installed are in conformance with the attached plans. Local subdivision regulations may authorize the subdivider, under conditions satisfactory to the governing body, to prepare these plans and specifications after the final plat has been filed, or file them with a government official other than the clerk and recorder, or both. If the approved plans and specifications are or will be filed with a government official other than the clerk and recorder, then a document or a statement on the conditions of approval sheet that states where the plans can be obtained must be filed or recorded;

(g) if a street, alley, avenue, road, or highway created by the plat will intersect with a state or federal right-of-way, a copy of the access or encroachment permit; and

(h) any other documents satisfying the subdivision application approval required by the governing body to be filed or recorded.

AUTH: 37-67-202, 76-3-403, 76-3-411, MCA

IMP: 37-67-314, 76-3-101 through 76-3-411, 76-3-403, MCA

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by

facsimile to (406) 841-2305, or by e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., October 9, 2012.

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

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

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

8. Ian Marquand, executive officer, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, ENGINEER SURVEYOR

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

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

Certified to the Secretary of State August 27, 2012

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

In the matter of the adoption of New) AMENDED NOTICE OF PUBLIC
Rules I through XXXIII pertaining to) HEARING ON PROPOSED
Medicaid home and community) ADOPTION
services children's autism program)

TO: All Concerned Persons

1. On July 26, 2012 the Department of Public Health and Human Services published MAR Notice No. 37-593 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1489 of the 2012 Montana Administrative Register, Issue Number 14.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on September 10, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department is proposing to amend proposed New Rule IV to remove the criteria regarding service opportunities being awarded only to children who do not have autism services coverage through private insurance which pays for autism services at the time of entry and the applicable procedures. The department submitted an amendment to the Center for Medicare and Medicaid Services for the children's autism waiver requesting the above criteria be added as a requirement for screening into the children's autism waiver. Based upon an Office of the General Counsel (OGC) opinion, the state's amendment request was denied. Therefore, the department is proposing to amend New Rule IV to remove the private health insurance criteria. The department is extending the comment period for this rulemaking to September 13, 2012.

4. New Rule IV is being amended as follows, new matter underlined, deleted matter interlined:

NEW RULE IV MEDICAID HOME AND COMMUNITY SERVICES
CHILDREN'S AUTISM PROGRAM 0667: SCREENING AND ACCEPTANCE
DETERMINATIONS (1) remains as proposed.

~~(2) Except as otherwise provided, service opportunities are only awarded to children who do not have autism services coverage through private insurance which~~

~~pays for autism services at the time of entry. If the child has private insurance, then one of the following procedures apply:~~

~~(a) if a child was selected for and entered the program prior to October 1, 2012 and the child has insurance which pays for autism services, then the child is allowed to remain in services for the three year period of the waiver opportunity; or~~

~~(b) if a child enters the program after October 1, 2012 and at the time of entry does not have insurance that pays for autism services but subsequently receives insurance that provides coverage for autism services, then the child's eligibility is terminated and the provision of program services is discontinued.~~

(3) through (6) remains as proposed, but are renumbered (2) through (5).

AUTH: 53-6-402, MCA

IMP: 53-6-402, MCA

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on September 13, 2012. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State August 27, 2012.

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

In the matter of the adoption of New) AMENDED NOTICE OF PUBLIC
Rules I through III pertaining to home) HEARING ON PROPOSED
and community-based services) ADOPTION
(HCBS) state plan program)

TO: All Concerned Persons

1. On July 26, 2012 the Department of Public Health and Human Services published MAR Notice No. 37-595 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1509 of the 2012 Montana Administrative Register, Issue Number 14.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on September 10, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department has received several comments from providers of high fidelity wraparound facilitation services expressing concern over the "encounter" unit of service and the minimum face-to-face billable time of 50 minutes. These providers voiced concern that the encounter unit and rate were not adequate to reflect the coordination requirements of high fidelity wraparound facilitation. The department has recalculated the rate of reimbursement to a 15-minute unit of service and will clarify that the 15-minute unit of service is for direct contact with the youth/family and for coordination specific to the youth/family. Paperwork, travel time, and mileage to and from the youth/family home, supervision, and other overhead will be included in the rate and not billable as a separate 15-minute unit of service.

4. This clarification of reimbursement rates and wraparound facilitation services is being made in Appendix A and pages 9 through 11 of the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual which has been incorporated by reference. A copy of the manual may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 Sanders, P.O. Box 4210, Helena, MT 59604 or at <http://www.dphhs.mt.gov/mentalhealth/children/>.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on September 13, 2012. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State August 27, 2012.

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

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 37.87.1303, 37.87.1333, and) HEARING ON PROPOSED
37.87.1335 and the repeal of) AMENDMENT AND REPEAL
37.87.1305, 37.87.1306, 37.87.1307,)
37.87.1321, 37.87.1325, and)
37.87.1331 pertaining to home and)
community-based services (HCBS))
for youth with serious emotional)
disturbance)

TO: All Concerned Persons

1. On July 26, 2012 the Department of Public Health and Human Services published MAR Notice No. 37-596 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1514 of the 2012 Montana Administrative Register, Issue Number 14.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on September 10, 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 MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department has received several comments from providers of high fidelity wraparound facilitation services expressing concern over the "encounter" unit of service and the minimum face-to-face billable time of 50 minutes. These providers voiced concern that the encounter unit and rate were not adequate to reflect the coordination requirements of high fidelity wraparound facilitation. The department has recalculated the rate of reimbursement to a 15-minute unit of service and will clarify that the 15-minute unit of service is for direct contact with the youth/family and for coordination specific to the youth/family. Paperwork, travel time, and mileage to and from the youth/family home, supervision, and other overhead will be included in the rate and not billable as a separate 15-minute unit of service.

4. This clarification of reimbursement rates and wraparound facilitation services is being made in Appendix A and pages 8 through 10 of the Home and Community-Based Services Bridge Waiver for Youth with Serious Emotional Disturbance Policy Manual which has been incorporated by reference. A copy of the

manual may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 Sanders, P.O. Box 4210, Helena, MT 59604 or at <http://www.dphhs.mt.gov/mentalhealth/children/>.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on September 13, 2012. Comments may also be faxed to (406) 444-9744 or e-mailed to dphhslegal@mt.gov.

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State August 27, 2012.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through IV pertaining to) PROPOSED ADOPTION
alternatives to out-of-state placement)
for at-risk youths)

TO: All Concerned Persons

1. On September 26, 2012, at 10:00 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 adoption 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 September 19, 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 adopted provide as follows:

NEW RULE I ALTERNATIVES TO OUT-OF-STATE PLACEMENT,
PURPOSE (1) The purpose of [New Rules I through IV] is to specify provider participation and program requirements to define the basis and procedure available for placement of high-risk children to in-state services as an alternative to out-of-state placement.

AUTH: 52-2-308, MCA
IMP: 52-2-310, 52-2-311, MCA

NEW RULE II ALTERNATIVES TO OUT-OF-STATE PLACEMENT,
DEFINITIONS As used in this chapter, the following definitions apply:

(1) "At risk" means high-needs youth who have proven challenging for typical in-state placements, and are at risk for out-of-state placement or returning from out-of-state placement.

(2) "Qualified provider pool" means all in-state Medicaid providers who meet the requirements established in [New Rule III] and who are granted access to the department-approved data management system.

AUTH: 52-2-308, MCA

IMP: 52-2-310, 52-2-311, MCA

NEW RULE III ALTERNATIVES TO OUT-OF-STATE PLACEMENT, PROVIDER REQUIREMENTS (1) Services funded through the program may only be provided by or through a provider that:

- (a) is enrolled with the department as a Montana Medicaid provider;
- (b) meets all the requirements necessary for the receipt of Medicaid monies;
- (c) has been determined by the department to be qualified to provide services to youth with serious emotional disturbance in accordance with the criteria set forth in these rules and must be:
 - (i) a licensed mental health center;
 - (ii) a therapeutic group home;
 - (iii) a psychiatric residential treatment facility; or
 - (iv) a 1915(i) home and community-based state plan provider.
- (d) is a legal entity; and
- (e) meets all facility and other licensing requirements applicable to the services covered, the service settings provided, and the professionals employed.

AUTH: 52-2-308, MCA

IMP: 52-2-310, MCA

NEW RULE IV ALTERNATIVES TO OUT-OT-STATE PLACEMENT, PROVIDER PARTICIPATION AND PROCEDURES (1) Qualified providers and acute care hospitals may request access to the system for an alternative to out-of-state placement by supplying an OM300 form which can be obtained by contacting the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

(2) Department-approved acute care hospitals and the department may place treatment plans on the department-approved data management system for review by qualified providers.

(3) Upon approval for access and according to the requirements of this subchapter a qualified provider may review the treatment plans on the department-approved data management system. The qualified provider must follow all applicable department rules, policies, and procedures when proposing a plan of care for providing services in-state for at-risk youth.

(4) All services that require prior authorization must be prior authorized in accordance with ARM 37.87.903.

AUTH: 52-2-308, MCA

IMP: 52-2-310, 52-2-311, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing New Rules I through IV to reflect the statutory amendments made by the 2011 Legislature with House Bill 565 (HB 565) to 52-2-208, 52-2-310, and 52-2-311, MCA.

HB 565 established rulemaking authority for the department to provide children with mental health needs with in-state service alternatives to out-of-state placement. New Rules I through IV are necessary to implement the department-approved data management system and protocol. They are also necessary to increase natural supports for youth receiving treatment in-state close to home which is more effective for families and can decrease long-term costs for the state. Transitioning a youth from out-of-state treatment to in-state community-based services has also proven more difficult due to distance and the lack of common diagnostic requirements and assessments.

The proposed rules are described below.

New Rule I

The proposed language in New Rule I sets forth the purpose of this subchapter. It provides a clear and concise preamble for this set of rules.

New Rule II

The proposed language in New Rule II defines the terminology that applies to alternatives to out-of-state placement.

New Rule III

The department is proposing New Rule III to specify provider requirements to gain access to the department-approved data management system and to subsequently be a part of the qualified provider pool to provide the services required to at-risk youth. Due to the nature of the intensive needs of at-risk youth and confidentiality requirements, the department is proposing to limit access to the system to only those providers equipped to serve this population.

New Rule IV

The department is proposing New Rule IV to establish protocol for providers who wish to gain access to the department-approved data management system and review treatment plans for at-risk youth. The intent of this data management system is to increase effective communication by providing a venue qualified providers may access in order to review the treatment plans and to encourage treatment of at-risk youth in-state and does not alter any applicable department rules, policies, or procedures. This will make it easier for the department to collect and report information as required by 53-2-311, MCA.

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., October 4, 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, apply and have been fulfilled. The primary bill sponsor was contacted by mail on May 25, 2012.

/s/ John C. Koch
Rule Reviewer

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

Certified to the Secretary of State August 27, 2012.

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

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through IV, the amendment of)	PROPOSED ADOPTION,
ARM 37.34.1401, 37.34.1402,)	AMENDMENT, AND REPEAL
37.34.1404, 37.34.1418, and)	
37.34.1420, and the repeal of ARM)	
37.34.1403, 37.34.1408, 37.34.1409,)	
37.34.1410, 37.34.1415, 37.34.1419,)	
37.34.1421, 37.34.1426, 37.34.1427,)	
and 37.34.1428 pertaining to positive)	
behavior support)	

TO: All Concerned Persons

1. On September 26, 2012, at 1:30 p.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 adoption, amendment, and repeal 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 September 19, 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 adopted provide as follows:

NEW RULE I POSITIVE BEHAVIOR SUPPORT: DESCRIPTION

(1) Positive behavior support is a set of evidence-based strategies used to reduce problem behavior by teaching new skills and making changes in the person's environment to improve quality of life.

(2) The foundation of positive behavior support is the functional behavior assessment described in [NEW RULE II].

(3) Positive behavior support strategies include:

(a) understanding how and what the person is communicating;

(b) understanding how other's presence, voice, tone, words, actions, and gestures impact the person and modifying these as necessary;

(c) supporting the person in communicating choices and wishes;

- (d) supporting staff to change their behavior when it has a detrimental impact;
 - (e) temporarily avoiding situations that are too difficult or uncomfortable for the person, unless the health or safety of the person or the established treatment plan is compromised;
 - (f) allowing the person to exercise as much control and decision making as possible over day-to-day routines;
 - (g) assisting the person to increase control over life activities and their environment;
 - (h) teaching the person coping, communication, and emotional self-regulation skills;
 - (i) anticipating situations that will be challenging and assisting the person to cope or to respond in a calm way;
 - (j) providing opportunities for the person such as valued work, enjoyable physical exercise, and preferred recreational activities;
 - (k) modifying the environment to remove stressors for the person; and
 - (l) ensuring all medical needs and conditions are identified and addressed.
- (4) The person's plan of care must incorporate the positive behavior support plan.

AUTH: 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-203, MCA

NEW RULE II POSITIVE BEHAVIOR SUPPORT: FUNCTIONAL

BEHAVIOR ASSESSMENT (1) A functional behavior assessment is the gathering of information about a person's behavior based upon multiple information sources, including:

- (a) a review of the person's records;
 - (b) personal observations;
 - (c) interviews with support providers;
 - (d) interviews with the person; and
 - (e) interviews with others who have personal knowledge of the person.
- (2) A functional behavior assessment must include:
- (a) a clear and measurable description of the challenging behavior, including frequency, duration, intensity, and severity of the behavior;
 - (b) a clear description of the need to alter the behavior;
 - (c) a clear description of medical, psychological, psychiatric, physiological, and environmental conditions in terms of how they may affect the occurrence of the challenging behavior;
 - (d) the events, times, and situations that predict both the occurrence and the nonoccurrence of the challenging behavior and a description of the events immediately preceding and following the behavior;
 - (e) summary statement(s) regarding the function(s) that may be maintaining the challenging behavior;
 - (f) data confirming the function of the challenging behavior and the strategies for reducing or eliminating the challenging behavior;

(g) functional alternative behavior that serves to meet the same function as the challenging behavior; and

(h) a clear and measurable procedure that will be used to alter the challenging behavior.

AUTH: 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-203, MCA

NEW RULE III POSITIVE BEHAVIOR SUPPORT: BEHAVIOR SUPPORT

PLAN (1) The behavior support plan is a formal written plan to address needs identified in a person's plan of care and must be developed for all persons engaging in challenging behavior. A behavior support plan must be developed as required by ARM 37.34.1420(4). The behavior support plan must be based on a functional behavior assessment as described in [New Rule II].

(2) Behavior support plans:

(a) utilize the basic principles of human behavior and learning and the principles of applied behavior analysis;

(b) emphasize the development of the functional alternative behavior using positive approaches, positive behavior intervention, and positive reinforcement procedures;

(c) use the least intervention possible;

(d) describe how to rearrange environments, alter curricula or tasks, and adjust schedules;

(e) are practical and appropriate for the settings where they will be implemented, for the person and for those who will implement the methods described;

(f) are evaluated through timely review of specific data on the progress and effectiveness of the procedure;

(g) identify functional alternative behavior that meets the same function as the challenging behavior;

(h) provide a clear and measurable procedure used to alter the challenging behavior;

(i) include a description of any restrictions necessary to protect the health and safety of the person, describe why the restrictions are necessary, and list the criteria for removing them;

(j) include reactive strategies to ensure the safety of the person and others; and

(k) are included in the person's plan of care.

(3) A behavior support plan must not include the use of seclusion, or the use of aversive, abusive or demeaning procedures, procedures that cause pain or discomfort except as provided for in the emergency procedures allowed for in ARM 37.34.1420.

(4) Use of the person's behavior support plan requires prior written consent from:

(a) the person;

(b) the person's planning team;

(c) the person's parent(s) if the person is under 18 years of age; and

- (d) the legal guardian, if one has been appointed by the court.
- (5) The person's planning team and the person's providers are responsible for the implementation of the person's behavior support plan.
- (6) A behavior support plan must include appropriate measures or training and monitoring staff performance of the behavior support plan.

AUTH: 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-203, MCA

NEW RULE IV POSITIVE BEHAVIOR SUPPORT: RESTRICTED

PROCEDURES (1) The following restricted procedures may be used for up to 90 calendar days as part of a behavior support plan that is developed and approved in accordance with [NEW RULE III]:

- (a) physically enforced contingent observation;
- (b) contingent access to personal possessions;
- (c) contingent access to personal funds;
- (d) educational fines;
- (e) physically enforced exclusion time out;
- (f) physically enforced overcorrection;
- (g) physically enforced positive practice overcorrection;
- (h) physically enforced restitutive overcorrection;
- (i) contingent access to social activities;
- (j) response cost; and
- (k) physically enforced required relaxation.

(2) A behavior support plan that includes the use of restrictive procedures must be approved by:

- (a) a board-certified behavior analyst (BCBA);
- (b) a family support specialist with an autism endorsement (FSS-AE);
- (c) a person with an Institute for Applied Behavior Analysis (IABA) consultant certification; or
- (d) a person with a degree in applied behavior analysis, psychology, or special education and documentation of training and experience in the use of the principles of applied behavior analysis in the habilitation of person(s) with developmental disabilities and the development of behavior support plans.

(3) A copy of the behavior support plan incorporating restricted procedures as listed in (1) must be sent to the developmental disabilities program director within three working days from approval.

(4) The developmental disabilities program director or their designee must provide prior written authorization for the continued use of the restricted procedures after 90 calendar days and the department designee is responsible for reviewing and monitoring the continued implementation and effectiveness of the behavior support plan.

(5) The restricted procedures in (1) may only be used in the delivery of services to a person as authorized by these rules.

AUTH: 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-203, MCA

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

37.34.1401 AVERSIVE PROCEDURES, POSITIVE BEHAVIOR SUPPORT: PURPOSE (1) ~~These rules are adopted to provide a system for the review, approval and implementation of ethical, safe, humane and efficient training procedures for persons with developmental disabilities in programs funded through the developmental disabilities program of the department of public health and human services. It is not the purpose of these rules to advocate the use of aversive procedures. Rather the purpose is to acknowledge that such procedures may be necessary when other less restrictive procedures have failed to significantly modify a person's behavior. The purpose of the rules under this subchapter is to require the use of positive behavior supports intended to encourage individual growth, improve quality of life, and reduce the use of unnecessary intrusive measures for persons funded through the department. Positive behavior support focuses on what is important to the person as well as what is important for the person when encouraging growth and change. This rule prohibits the use of seclusion or the use of aversive, abusive or demeaning procedures, or procedures that cause pain or discomfort except as provided for in the emergency procedures allowed for in ARM 37.34.1420. This subchapter applies to persons receiving services from community-based providers that are funded entirely or in part by the department.~~

AUTH: 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1402 POSITIVE BEHAVIOR SUPPORT: APPLICABILITY (1) ~~A person in a program of developmental disabilities services, funded entirely or in part by the state of Montana, shall be afforded the protections imposed by these rules. All children and adults receiving services from community-based providers that are funded entirely or in part by the department must be afforded the protections imposed by these rules. Any provider contracting with the department to provide services to persons with developmental disabilities shall~~ must ~~conduct its activities in accordance with these rules.~~

AUTH: 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1404 AVERSIVE PROCEDURES POSITIVE BEHAVIOR SUPPORT: DEFINITIONS For purposes of this subchapter, the following definitions apply:

(1) ~~"Advocate" means a citizen advocate, a representative of the Montana advocacy program, a friend acknowledged by the person to be the person's advocate or the parent/guardian of a person with developmental disabilities is~~ defined in ARM 37.34.102.

(2) ~~"Alternative behavior" means a behavior that can, but is not likely to occur at the same time as a maladaptive target~~ challenging behavior.

~~(3) "Antecedent stimulus modification" means arranging the environment that exists at the time of the occurrence of the maladaptive target behavior in such a way that the maladaptive target behavior becomes less likely to occur.~~

~~(4)(3) "Aversive" means any stimulus or event from which a person will seek to escape, avoid, or terminate, if given an opportunity to do so.~~

~~(5) "Aversive procedure" means a procedure as defined in and implemented in this subchapter that is aversive in nature and is implemented for the purpose of reducing or eliminating a maladaptive target behavior.~~

~~(6) "Contingent exercise" means a method of decreasing a maladaptive target behavior by requiring a person who engages in the undesired behavior to perform exercises or movements that are not topographically similar to the maladaptive target behavior.~~

(4) "Challenging behavior" means a behavior that presents a risk or potential risk to the health or safety of a person or to others.

~~(7)(5) "Contingent observation" means a method of decreasing a maladaptive target challenging behavior by telling a the person they are engaging in a maladaptive target behavior what they are doing wrong and asking the person to not participate in the ongoing activity for a short period of time, to be seated nearby, and to observe others engaging in a specific appropriate behavior and receiving positive reinforcement for it. ~~The trainer concurrently attends to and reinforces those persons behaving appropriately. The person who is observing the behavior may rejoin the activity group after a few minutes of observation if when the person agrees to behave appropriately. The person's who rejoins the group appropriate behavior is then reinforced by the trainer when the person exhibits the appropriate behavior.~~~~

~~(8)(6) "Contingent access to social activities and personal possessions including personal funds" means that upon the occurrence of a specified maladaptive target challenging behavior, a the person's attendance at social activities and use of personal possessions including personal funds is restricted.~~

~~(9)(7) "Corporal punishment" means aversive stimulation that is inflicted directly on the body following a specific maladaptive target behavior that decreases the probability of the behavior occurring in the future. Examples would include but not be limited to spanking, electric shock, lemon juice into the mouth, etc. knowingly and purposefully inflicting physical pain on a person as a disciplinary measure.~~

~~(10) "Deceleration program" means the use of systematic program techniques or procedures to decrease the rate of specific maladaptive target behaviors. These deceleration programs must include nonaversive procedures such as: functional analysis of the behavior, teaching replacement behaviors, positive reinforcement, antecedent stimulus modification, differential reinforcement, etc. Systematic deceleration program procedures might also include the use of aversive procedures as defined by this rule.~~

~~(11) "Differential reinforcement" means a procedure for providing systematic reinforcers for behaviors so that these behaviors occur more frequently than the maladaptive target behaviors. Variations include:~~

- ~~(a) differential reinforcement of other behaviors;~~
- ~~(b) differential reinforcement of incompatible behaviors;~~
- ~~(c) differential reinforcement of other behaviors on a progressive schedule;~~
- ~~(d) differential reinforcement of alternative behavior; and~~

~~(e) differential reinforcement of low rate behavior.~~

~~(12) "Differential reinforcement of other behaviors (DRO)" means that reinforcement occurs at the end of the interval if the maladaptive target behavior has not occurred during that interval.~~

~~(13) "Differential reinforcement of other behavior on a progressive schedule (DROP)" means that the amount a reinforcement will be increased for consecutive intervals in which the specified maladaptive target behavior does not occur, to a maximum level of reinforcement. Once the person has reached the highest level of reinforcement, the amount of reinforcement remains at this level as long as the maladaptive target behavior does not occur. When the maladaptive target behavior does occur, the level of reinforcement returns to the smallest amount.~~

~~(14) "Differential reinforcement of incompatible behaviors (DRI)" means that reinforcement occurs following a specified incompatible behavior. The maladaptive target behavior is concurrently placed on extinction.~~

~~(15) "Differential reinforcement of alternative behavior (DRA or Alt-R)" means that reinforcement occurs following a specified alternative behavior. The maladaptive target behavior is concurrently placed on extinction.~~

~~(16) "Differential reinforcement of low rate behavior (DRL)" means that reinforcement occurs only when the maladaptive target behavior occurs at or below a specified rate.~~

~~(17)(8) "Educational fine" means a system of decreasing maladaptive target challenging behavior based upon a token or point system. A small fine is levied contingent upon the occurrence of a maladaptive target challenging behavior. Each fine must be accompanied by a teaching episode A teaching episode must accompany each fine which includes a description of the maladaptive target challenging behavior, the amount of the fine, instruction on the appropriate forms of behavior, and the opportunity for the person to "earn back" a portion of the fine for practicing the appropriate behaviors.~~

~~(18)(9) "Exclusion time out" means a method of decreasing a maladaptive target challenging behavior by requiring a person to leave an ongoing reinforcing situation for a period of time, contingent on the occurrence of some previously specified maladaptive target challenging behavior. Unlike contingent observation, the person is not instructed to observe the appropriate behavior of others.~~

~~(19) "Extinction" means that a previously reinforced behavior is no longer followed with the reinforcing consequence. This makes it likely that over time the behavior will diminish. Extinction is different from punishment in that with extinction the reinforcer is simply no longer given when the target behavior occurs.~~

~~(20) "Functional analysis" means the assessment of many variables prior to intervening on a behavior. This assessment could include but not be limited to a review of the following: historical events; antecedent events; consequences; environmental factors such as reinforcer preferences and efficiency, expectations of others, environmental pollutants such as noise and crowding, etc.; and the communicative functions of behavior.~~

~~(21)(10) "Graduated guidance" means systematically providing the minimum degree of physical assistance necessary to ensure that a desired behavior occurs. Graduated guidance is a technique combining physical guidance and fading in which the physical guidance is systematically and gradually reduced and faded according~~

to the person's responsiveness. Graduated guidance techniques do not include physical restraint as a primary component. Graduated guidance is assistive rather than restrictive and does not involve forced compliance.

~~(22) "Incompatible behavior" means a behavior that is opposite to and cannot be emitted at the same time as a maladaptive target behavior.~~

~~(23) "Individual program plan (IPP)" means a written set of procedures designed to meet a specific behavioral objective relating to a person's adaptive behavior. For the purposes of decelerating maladaptive target behaviors an individual program plan includes at least the following components:~~

~~(a) A clear objective description of the maladaptive target behavior to be reduced or eliminated.~~

~~(b) A clear objective description of the incompatible or alternative appropriate response which will be reinforced.~~

~~(c) A list of programs to teach replacement behaviors that serve the same behavioral function identified through a functional analysis or review of the maladaptive target behaviors.~~

~~(d) A baseline measurement of the level of the target behavior before intervention.~~

~~(e) Reinforcement procedures which specify:~~

~~(i) the reinforcers to be employed;~~

~~(ii) the schedule for delivering the reinforcers;~~

~~(iii) a detailed description of the procedure for delivering the reinforcers;~~

~~(iv) the names of persons who will carry out these procedures.~~

~~(f) Deceleration procedures which specify:~~

~~(i) the name of the procedure which will be employed as a consequence for the maladaptive target behavior;~~

~~(ii) a detailed description of the procedure;~~

~~(iii) the names of persons who will carry out the procedure;~~

~~(iv) the name of the person who will supervise the implementation of the~~

~~procedure;~~

~~(v) a limit on the use of any aversive procedure in one incident or time period.~~

~~(g) Data collection procedures which include:~~

~~(i) the kind of data which will be collected;~~

~~(ii) when the data will be taken;~~

~~(iii) who will collect the data;~~

~~(iv) who will review the data;~~

~~(v) at what point the person will graduate from the program;~~

~~(vi) data based criterion for modifying the program if the procedure is not effective;~~

~~(vii) graphs of the data;~~

~~(viii) data based criterion for terminating the procedure if it is not effective;~~

~~and~~

~~(ix) a description of how data will be systematically shared and reviewed across program settings.~~

~~(24) "Maladaptive target behavior" means the inappropriate behavior the individual program plan is designed to control or eliminate.~~

~~(25)~~(11) "Mechanical restraint" means physically restricting a person's movement through the use upon the person of any mechanical or restrictive device. a physical device used to restrict the person's movement or restrict the normal function of the person's body. The definition does not include the following:

(a) physical equipment or orthopedic appliances, surgical dressings or bandages, supportive body bands or other restraints necessary for medical treatment, routine physical examinations, or medical tests;

(b) devices used to support functional body position or proper balance; or

(c) equipment used for safety during transportation.

~~(26)~~ "Modeling with positive reinforcement" means the reinforcement of a specified and appropriate behavior of one or more persons in order to induce a second person to imitate that appropriate behavior. The second person then receives reinforcers if that person displays the appropriate behavior.

~~(27)~~ "Nonexclusionary time out" means that, following the occurrence of a maladaptive target behavior, a stimulus is introduced which indicates for the person that reinforcement will not occur for some specified period of time. The person remains in the activity, but does not receive reinforcers during the period of time that the stimulus is present.

~~(28)~~(12) "Overcorrection" means a technique used to decrease a maladaptive target challenging behavior. The two main types of overcorrection are restitutive overcorrection and positive practice overcorrection.

(13) "Physical enforcement" means a person is required to perform a behavior by another person using physical contact with them.

(14) "Physical prompt" means a person physically guides the person to perform a response.

~~(29)~~(15) "Physical restraint" means the restriction of a the person's movement by one or more persons holding or applying physical pressure by holding or applying physical pressure to bring the person's behavior under control in order to avoid the risk of serious harm to the person, other person(s), or to the environment. The term physical restraint does not include the use of physical prompt or graduated guidance.

~~(30)~~(16) "Positive practice overcorrection" means a form of overcorrection requiring a the person engaging in a maladaptive target challenging behavior to intensely practice a specified appropriate alternative behavior.

~~(31)~~ "Positive reinforcement" means specifically adding an event or stimulus following the occurrence of a target behavior that increases the probability of the behavior being maintained or occurring more frequently in the future.

~~(32)~~ "Punishment" means specifically adding an event or stimulus following the occurrence of a target behavior that decreases the probability of the behavior being maintained or occurring more frequently in the future.

~~(33)~~(17) "Required relaxation" means requiring a the person to relax quietly for a period of time after the occurrence of a maladaptive target challenging behavior.

~~(34)~~(18) "Response cost" means a procedure reducing accumulated reinforcement upon the occurrence of a maladaptive target challenging behavior, thus making the behavior less likely to occur.

~~(35) "Restitution" means a procedure used to decrease a maladaptive target behavior by directing a person to restore the person's environment. Variations include:~~

- ~~(a) simple restoration; and~~
- ~~(b) restorational overcorrection.~~

~~(36)(19) "Restitutorial overcorrection" means a form of overcorrection requiring a person engaging in a maladaptive target challenging behavior to restore the environment to its previous state and improve on the previous conditions.~~

~~(37)(20) "Restriction of rights/privileges" means procedures which involve withdrawal, delay, or curtailment of rights or privileges which a the person may ordinarily exercise. Such withdrawal is usually in connection with a program through which the person may exercise such rights and/or privileges by performing specified behaviors.~~

~~(38) "Satiation" means that a reinforcer loses its reinforcing effect due to the extent that it is continuously presented.~~

~~(39)(21) "Seclusion time-out" means a method of decreasing a maladaptive target behavior by requiring a person to leave an ongoing reinforcing activity and go to a closed room for a period of time. Seclusion time-out is contingent on the occurrence of some previously specified maladaptive target behavior. The room to which the person must go must not be reinforcing in any manner requiring the person to remain alone in a room or any area behind a closed door which prevents them from leaving or being observed for a period of time.~~

~~(40) "Self-reinforcement" means a contingency established by a person to control that person's behavior through the delivery of reinforcement. The reinforcers remain under control of the person and the person is free to violate the contingencies at any time.~~

~~(41) "Simple restitution" means restoring the environment to the state that existed before a disruptive event occurred. Simple restitution does not include forced compliance by physically forcing a person to comply. Simple restitution should instead be accomplished by verbal and gestural cues, prompts or graduated guidance.~~

AUTH: ~~53-2-201, 53-6-402, 53-20-204, MCA~~

IMP: ~~53-6-402, 53-20-203, 53-20-205, MCA~~

37.34.1418 AVERSIVE PROCEDURES POSITIVE BEHAVIOR SUPPORT: RESTRICTION OF ANY CLIENT RIGHTS PROHIBITIONS (1) The following rights may not be restricted for the purposes of an aversive program a positive behavior support program:

- ~~(a) the right to education and training services;~~
- ~~(b) the right to reside, work and receive treatment in a safe environment to live, work, and receive treatment;~~
- ~~(c) the right to an individual plan of care;~~
- ~~(d) the right to prompt medical and dental care;~~
- ~~(e) the right to a nourishing, well-balanced diet;~~
- ~~(f) the right to acquire the assistance of an advocate;~~
- ~~(g) the right to the opportunity for religious worship; and~~

(h) ~~the right to just compensation for work performed.~~

(2) Corporal punishment and verbal and physical abuse are prohibited in the delivery of services to a person.

AUTH: ~~53-2-201~~, 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-203, ~~53-20-205~~, MCA

37.34.1420 AVERSIVE PROCEDURES POSITIVE BEHAVIOR SUPPORT: EMERGENCY PROCEDURES

~~(1) Emergencies are those situations for which no approved individual program plan exists and which if not dealt with may result in injury to the client or other persons or significant amounts of property destruction. Emergencies are situations in which the person, other person(s), or the environment is at imminent risk of serious harm or damage due to the person's challenging behavior.~~

~~(2) If an emergency occurs the service provider may apply the following techniques as necessary to bring a person's behavior under control the following procedures may be used if necessary to prevent the imminent risk of serious harm or damage to the person, other person(s), or the environment:~~

~~(a) Pphysical restraint; or~~

~~(b) Exclusion time-out; or mechanical restraint, upon written order by a licensed physician for medical reasons.~~

~~(c) Seclusion time-out in a room that conforms to the minimum requirements established by the developmental disabilities program review committee (DDPRC) and, that has been approved by the regional manager prior to use.~~

~~(3) All instances of the use of emergency procedures must be reported, in writing, to the regional manager within 48 hours. Such reports shall include at a minimum the time and date of the incident, the persons involved, the type and duration of the incident, a description of the cause(s) leading to it, any witnesses to the incident, the procedures employed, and other significant details. If an emergency procedure is used three times in a 6 month period, a written individual program plan must be developed. Incident reporting must meet the requirements described in ARM Title 37, chapter 34, subchapter 15.~~

~~(4) A behavior support plan, as described in [New Rule III], must be developed for the person if physical restraint is used three times in a three-month period.~~

AUTH: ~~53-2-201~~, 53-6-402, 53-20-204, MCA

IMP: 53-6-402, 53-20-203, ~~53-20-205~~, MCA

5. The department proposes to repeal the following rules:

37.34.1403 AVERSIVE PROCEDURES: USE is found on page 37-7501 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-203, 53-20-205, MCA

37.34.1408 AVERSIVE PROCEDURES: SYSTEMATIC PROGRAM REVIEW is found on page 37-7511 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1409 AVERSIVE PROCEDURES: APPROVAL CRITERIA is found on page 37-7511 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1410 AVERSIVE PROCEDURES: CLASSIFICATION AND CONDITIONS GOVERNING USE OF PROCEDURES is found on page 37-7512 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1415 AVERSIVE PROCEDURES: DEVELOPMENTAL DISABILITIES PROGRAM REVIEW COMMITTEE is found on page 37-7517 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1419 MEAL DELAY is found on page 37-7521 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1421 AVERSIVE PROCEDURES: REIMPOSITION OF DECELERATION PROGRAM is found on page 37-7522 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1426 AVERSIVE PROCEDURES: APPEAL PROCESS is found on page 37-7527 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1427 AVERSIVE PROCEDURES: STAFF CERTIFICATION is found on page 37-7527 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

37.34.1428 AVERSIVE PROCEDURES: UNCLASSIFIED PROCEDURES is found on page 37-7528 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA
IMP: 53-20-203, 53-20-205, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM Title 37, chapter 34, subchapter 14. The current rules were drafted in 1986 and many of the specific aversive, restrictive, and intrusive procedures that are allowed by the ARM language are no longer felt to be necessary or appropriate by many professionals, professional organizations, advocacy groups, other state programs, persons receiving services, or their parents and legal guardians. The department also proposes a title change to reflect the move from "aversive procedure" to "positive behavior support."

New Rules I-IV

The proposed new rules provide a process requiring the use of less aversive, restrictive, and intrusive procedures with persons exhibiting challenging behaviors and prohibits the inappropriate use of restraint, seclusion, and other specific aversive, restrictive, and intrusive procedures with persons exhibiting challenging behavior.

New Rule I

The department proposes language which provides a description of positive behavior support and the strategies available in order to reduce problem behavior. Positive behavior support is a set of research-based strategies used to reduce problem behavior by teaching new skills and making changes in a person's environment to improve quality of life. The proposed amendments require the use of positive behavior support to provide safeguards ensuring the health and safety of persons receiving community-based services funded through the department. Additionally, they require the use of commonly accepted professional procedures and best practices recommended for use with persons who have a developmental disability and are exhibiting challenging behavior. The intent of positive behavior support is to enhance the person's quality of life and to reduce the use of unnecessary intrusive procedures.

New Rule II

New Rule II describes the functional assessment, the sources for information gathering, and what is required in a functional behavior assessment. The functional assessment is the foundation of positive behavior support and serves to identify the

function that the behavior serves for an individual and strategies to teach or strengthen behaviors that enhance the individual's overall productivity and integration into their community.

The use of functional assessments supports the concept of individualized planning using a person-centered approach. Positive behavior support is most effective when the desires and wishes of the person are understood and addressed and ways to minimize situations or issues that are stressful for the person are included; which help the person have maximum control over their life.

New Rule III

The department is proposing New Rule III to provide information describing the components of a positive behavior support plan and plan development. The information gathered in the functional assessment is employed to create the positive behavior support plan. The behavior support plan is the instrument which clearly addresses the needs of the person identified in the functional assessment and directs the delivery of the person's services. The behavior support plan further emphasizes the concept of individualized planning using a person-centered approach for persons in community-based services.

New Rule IV

The department proposes New Rule IV which lists restricted procedures and describes under what circumstances those procedures may be used. It is important that directives regarding restricted procedures are evident to all providers and persons receiving services, to provide consistency in practices, and to relate the circumstances under which restricted procedures may be implemented. New Rule IV provides safeguards to help ensure the health and safety and to protect the rights and dignity of persons receiving services funded by the department.

ARM 37.34.1401, 1402, 1420

The proposed amendments to ARM 37.34.1401, 37.34.1402, and 37.34.1420 remove the outdated references to aversive procedures and provide for the use of positive behavior support.

ARM 37.34.1404

The department proposes to amend ARM 37.34.1404 which removes outdated definitions and provides updated definitions based on the most current practices.

ARM 37.34.1418

The department proposes to clarify that this rule applies to the positive behavior support program addressed in this subchapter.

7. 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., October 4, 2012.

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

9. 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 7 above or may be made by completing a request form at any rules hearing held by the department.

10. 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.

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

/s/ Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State August 27, 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 37.86.2401 and 37.86.2501) PROPOSED AMENDMENT
pertaining to specialized)
nonemergency medical transportation)

TO: All Concerned Persons

1. On September 28, 2012, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, at 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 September 21, 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:

37.86.2401 TRANSPORTATION AND PER DIEM, DEFINITIONS

(1) and (2) remain the same.

(3) "Transportation service" means travel furnished by common carrier or private vehicle.

(a) remains the same.

(b) A motor carrier operated by the Indian Health Service or by a federally recognized Indian Tribe which meets all applicable standards for a class B public service commission license need not obtain such a license to be enrolled as a Medicaid provider under (3).

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-141, MCA

37.86.2501 SPECIALIZED NONEMERGENCY MEDICAL
TRANSPORTATION, DEFINITIONS

(1) Specialized nonemergency transportation means transportation service by a provider with a class B public service commission license allowing the provider to transport physically disabled individuals.

(a) A motor carrier operated by the Indian Health Service or by a federally recognized Indian Tribe which meets all applicable standards for a class B public service commission license need not obtain such a license to be enrolled as a Medicaid provider under (1).

(2) and (3) remain the same.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-141, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.2401 and 37.86.2501.

ARM 37.86.2401 and 37.86.2501

ARM 37.86.2401 and ARM 37.86.2501 address definitions and requirements for nonemergency medical transportation providers. The rules require specialized nonemergency transportation providers and certain common carriers to obtain a class B license from the Montana Public Service Commission before the department may enroll such providers in the Montana Medicaid program. Currently, these rules also require Tribal governments and related Indian Health Service (IHS) entities to obtain a class B license from the Montana Public Service Commission before the department may enroll these entities as Medicaid providers. The rules create an unnecessary barrier to Medicaid provider enrollment for Tribal entities which otherwise meet all applicable standards for a class B license and are inconsistent with the federal requirements found at 25 U.S.C. Section 1647a (a) (2). If this barrier is removed, access to nonemergency medical transportation will be improved for eligible Tribal people. The intent of the rule amendments is to remove this barrier only for purposes of enrollment in the Montana Medicaid Program. In amending the rules, the department does not intend to vitiate any other applicable law. The department is required to operate the Montana Medicaid Program and to adopt Medicaid rules in conformance with federal law. The department must also work with Tribes to foster a spirit of cooperation and to remove current institutional barriers that limit the participation of tribal members in the Medicaid Program.

Fiscal Impact

There is no state fiscal impact based on current knowledge. This rule eliminates an unnecessary barrier that has prevented federally recognized Indian Tribes from obtaining 100% federal Medicaid funds for transportation.

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., October 4, 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/ Kurt R. Moser
Rule Reviewer

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

Certified to the Secretary of State August 27, 2012.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
1.2.419 regarding the scheduled dates) PROPOSED AMENDMENT
for the 2013 Montana Administrative)
Register)

TO: All Concerned Persons

1. On September 27, 2012, a public hearing will be held at 9:30 a.m. in the Secretary of State's Office Conference Room, Room 260, State Capitol Building, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Secretary of State will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Secretary of State no later than 5:00 p.m. on September 13, 2012, to advise us of the nature of the accommodation that you need. Please contact Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, MT 59620-2801; telephone (406) 461-5173; fax (406) 444-4249; TDD/Montana Relay Service (406) 444-9068; or e-mail jquintana@mt.gov.

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

1.2.419 FILING AND PUBLICATION SCHEDULE FOR THE MONTANA ADMINISTRATIVE REGISTER (1) The scheduled filing dates, time deadline, and publication dates for material to be published in the Montana Administrative Register are listed below:

~~2012 Register Publication Schedule~~

Issue	Filing (due by noon)	Publication
1	January 3	January 12
2	January 17	January 26
3	January 30	February 9
4	February 13	February 23
5	February 27	March 8
6	March 12	March 22
7	April 2	April 12
8	April 16	April 26
9	April 30	May 10
10	May 14	May 24

11	May 29	June 7
12	June 11	June 21
13	July 2	July 12
14	July 16	July 26
15	July 30	August 9
16	August 13	August 23
17	August 27	September 6
18	September 10	September 20
19	October 4	October 14
20	October 15	October 25
21	October 29	November 8
22	November 13	November 23
23	November 26	December 6
24	December 10	December 20

2013 Register Publication Schedule

<u>Issue</u>	<u>Filing (due by noon)</u>	<u>Publication</u>
<u>1</u>	<u>December 31</u>	<u>January 10</u>
<u>2</u>	<u>January 14</u>	<u>January 24</u>
<u>3</u>	<u>January 28</u>	<u>February 7</u>
<u>4</u>	<u>February 11</u>	<u>February 21</u>
<u>5</u>	<u>February 25</u>	<u>March 7</u>
<u>6</u>	<u>March 11</u>	<u>March 21</u>
<u>7</u>	<u>March 25</u>	<u>April 4</u>
<u>8</u>	<u>April 15</u>	<u>April 25</u>
<u>9</u>	<u>April 29</u>	<u>May 9</u>
<u>10</u>	<u>May 13</u>	<u>May 23</u>
<u>11</u>	<u>May 28</u>	<u>June 6</u>
<u>12</u>	<u>June 10</u>	<u>June 20</u>
<u>13</u>	<u>June 24</u>	<u>July 5</u>
<u>14</u>	<u>July 8</u>	<u>July 18</u>
<u>15</u>	<u>July 22</u>	<u>August 1</u>
<u>16</u>	<u>August 5</u>	<u>August 15</u>
<u>17</u>	<u>August 26</u>	<u>September 5</u>
<u>18</u>	<u>September 16</u>	<u>September 26</u>
<u>19</u>	<u>September 30</u>	<u>October 10</u>
<u>20</u>	<u>October 15</u>	<u>October 24</u>
<u>21</u>	<u>October 28</u>	<u>November 7</u>
<u>22</u>	<u>November 12</u>	<u>November 21</u>
<u>23</u>	<u>November 25</u>	<u>December 5</u>

24 December 9

December 19

(2) remains the same.

AUTH: 2-4-312, MCA

IMP: 2-4-312, MCA

4. ARM 1.2.419 is proposed to be amended to set dates pertinent to the publication of the Montana Administrative Register during 2013. The schedule is proposed during the month of September in order that it may be adopted during October to allow state agencies the opportunity to plan their rulemaking schedule to meet program needs for the upcoming year.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing jquintana@mt.gov, and must be received no later than 5:00 p.m., October 5, 2012.

6. Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, has been designated to preside over and conduct the hearing.

7. The Secretary of State maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding administrative rules, corporations, elections, notaries, records, uniform commercial code, or combination thereof. Such written request may be mailed or delivered to the Secretary of State's Office, Administrative Rules Services, 1236 Sixth Avenue, P.O. Box 202801, Helena, MT 59620-2801, faxed to the office at (406) 444-4263, or may be made by completing a request form at any rules hearing held by the Secretary of State's Office.

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

/s/ Jorge Quintana
JORGE QUINTANA
Rule Reviewer

/s/ Linda McCulloch
LINDA MCCULLOCH
Secretary of State

Dated this 27th day of August, 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 VII pertaining to)	AMENDMENT, AND REPEAL
mortgage servicers, the amendment of)	
ARM 2.59.1701, 2.59.1703, 2.59.1706,)	
2.59.1707, 2.59.1709, 2.59.1725,)	
2.59.1727, 2.59.1728, 2.59.1730,)	
2.59.1731, and the repeal of ARM)	
2.59.1721, 2.59.1722, 2.59.1723,)	
2.59.1732, and 2.59.1736)	

TO: All Concerned Persons

1. On April 26, 2012, the Department of Administration published MAR Notice No. 2-59-462 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 778 of the 2012 Montana Administrative Register, Issue Number 8.

2. The department has adopted New Rules II (2.59.1744), IV (2.59.1745), and VI (2.59.1747) as proposed. The department has adopted New Rules I (2.59.1743), V (2.59.1746), and VII (2.59.1748), as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined as follows:

NEW RULE I (2.59.1743) REPORTING FORMS FOR MORTGAGE SERVICERS ~~(1) An applicant for a mortgage servicer license in Montana shall provide a report to the department of the Montana residential mortgage loans serviced within the previous 12-month period prior to the submission of its mortgage servicer application. The report must contain the information in (3). The report must be submitted to the department on the mortgage servicer reporting form, MT-5 Servicer Reporting Form, which is adopted by reference. The form may be downloaded from the Nationwide Mortgage Licensing System web site <http://mortgage.nationwidelicensingsystem.org/slr/StateForms/MT5-Servicer%20Reporting%20Form.pdf>.~~

(2) through (3)(f) remain as proposed, but are renumbered as (1) through (2)(f).

AUTH: 32-9-130, MCA
IMP: 32-9-170, MCA

The department is deleting (1) dealing with the report of the Montana residential mortgage loans serviced within the previous 12-month period prior to the submission of a mortgage servicer application. The department no longer needs this report. Since mortgage servicers had to be licensed as of October 1, 2011, there

should not be any Montana mortgage loans serviced by new applicants in the 12-month period before the application because that would be unlicensed activity.

NEW RULE V (2.59.1746) RECORD MAINTENANCE, STORAGE, TRANSFER, AND DESTRUCTION (1) through (3) remain as proposed.

(4) A person who disposes of records at the end of the retention period shall destroy personal information by shredding, burning, erasing, or otherwise making the information indecipherable as required by 30-14-1703, MCA, the Fair and Accurate Credit Transactions Act of 2003 (15 USC 1681 et seq.), and the regulations adopted thereunder (16 CFR 682).

(5) remains as proposed.

AUTH: 32-9-121, 32-9-130, MCA

IMP: 32-9-121, 32-9-124, 30-14-1703, 30-14-1704, MCA

The department is correcting a typographical error. The statute cited should be 30-14-1703, not 30-14-703, MCA. In addition, the department is adding two additional statutes that are implemented by this rule.

NEW RULE VII (2.59.1748) MONTANA-SPECIFIC ESCROW FUND (1) A mortgage servicer shall:

(a) establish an escrow fund specifically for Montana residential mortgage loans being serviced. The escrow fund must contain only money related to Montana residential mortgage loans; or

(b) elect to provide to the department loan account histories of the residential mortgage loans located in Montana along with the escrow account statements or reports showing how, when, and where those payments were held, applied, and distributed for the period the servicer has serviced the loan.

AUTH: 32-9-130, MCA

IMP: 32-9-145, MCA

The department is revising New Rule VII based on comment received. See Comment 2.

3. The department has amended ARM 2.59.1701 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined as follows:

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Act and this subchapter, the following definitions apply:

(1) through (5) remain as proposed.

(6) "Personal information" means:

~~(a) a customer's name, address, or telephone number, in conjunction with the customer's social security number, date of birth, driver's license number, account number, credit or debit card number, or a personal identification number or password that would permit access to the customer's account; or~~

~~(b) any combination of components of customer information that would allow an unauthorized third party to access the customer's account electronically, such as user name and password or password and account number.~~
an individual's name, signature, address, or telephone number, in combination with one or more additional pieces of information about the individual, consisting of the individual's passport number, driver's license, or state identification number, insurance policy number, bank account number, credit card number, debit card number, password, or personal identification number required to obtain access to the individual's finances. A social security number, in and of itself, constitutes personal information.

(8) through (11) remain as proposed.

AUTH: 32-9-121, 32-9-125, 32-9-130, MCA

IMP: 32-9-109, 32-9-116, 32-9-117, 32-9-121, 32-9-122, 32-9-123, 32-9-125, 32-9-133, MCA

The department is amending this proposed rule in response to the comments received in this rulemaking.

2.59.1703 TRANSFER OF LOAN ORIGINATOR LICENSE (1) Transfer of an individual mortgage loan originator license from one entity to another must be approved by the department. To transfer an individual mortgage loan originator license, the individual mortgage loan originator shall request sponsorship through the Nationwide Mortgage Licensing System (NMLS) by the new entity. The new entity must accept sponsorship of the individual through the NMLS. The request for sponsorship must be accompanied by a nonrefundable processing fee of \$50.

AUTH: 32-9-130, MCA

IMP: 32-9-116, 32-9-117, MCA

The department is amending this rule to explain the abbreviation of NMLS in these rules.

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

COMMENT 1: The Montana Credit Union Network (MCUN) commented the definition of personal information should be broadened from "customer" to "consumer" to better reflect the relationship that some individuals in a mortgage application situation may pose. The MCUN recommends the department adopt the definition of personal information in 30-14-1702, MCA.

RESPONSE 1: The department thanks the Montana Credit Union Network for this comment. The department agrees with this comment and has revised the definition.

COMMENT 2: Select Portfolio Servicing, Inc. (SPS) commented that proposed Rule VII requires an unnecessary burden and cost for the servicing industry in the management of escrow accounts. SPS commented that requiring a Montana-specific account is contrary to current industry practice, is unlike other accounting requirements in other jurisdictions, and would require the manual movement of Montana consumers' escrow funds. SPS services loans that were bundled and pooled into various trusts. Each trust is governed by a separate agreement. Each trust has its own separate account into which borrowers' funds are placed in order to ensure proper accounting. SPS has 350 pools at present. The rule would require SPS to have 700 escrow accounts to monitor and document.

SPS believes an examination requirement that servicers provide escrow account statements and loan account payment histories would allow the department to examine servicers and track escrow account payments.

RESPONSE 2: The department appreciates this comment and has redrafted the rule in light of this comment.

COMMENT 3: SPS commented that proposed Rule I (3)(d) which requires the unique identifier of the originating broker or lender requires information that third-party servicers generally do not have. Moreover, SPS has no way to compel production of that information from the originating broker or lender.

RESPONSE 3: The department understands that third-party servicers will not have this information. However, all that is required by the proposed rule is that the third-party servicer write "N/A" in response to this question. The department does not view this requirement as unduly burdensome on third-party servicers.

5. The department has amended the following rules exactly as proposed: ARM 2.59.1706, 2.59.1707, 2.59.1709, 2.59.1725, 2.59.1727, 2.59.1730, and 2.59.1731.

6. The department has repealed the following rules as proposed: ARM 2.59.1721, 2.59.1722, 2.59.1723, 2.59.1732, and 2.59.1736.

7. The department has decided not to adopt New Rule III or amend ARM 2.59.1728 at this time. New Rule III and ARM 2.59.1728 will be renoticed at a later date.

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 August 27, 2012.

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 12.9.602, 12.9.604, 12.9.606,) ADOPTION
12.9.615, 12.9.701, 12.9.702, 12.9.703,)
12.9.704, 12.9.705 and 12.9.706, and)
adoption of NEW RULE I (ARM)
12.9.707) regarding upland game bird)
release and habitat enhancement)
programs)

TO: All Concerned Persons

1. On March 8, 2012, the Department of Fish, Wildlife and Parks (department) published MAR Notice No. 12-375 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 463, 2012 Montana Administrative Register, issue number 5.

2. The department has amended ARM 12.9.602, 12.9.604, 12.9.606, 12.9.615, 12.9.701, 12.9.702, 12.9.703, 12.9.704, and 12.9.706, and adopted NEW RULE I (ARM 12.9.707) as proposed. The department has amended ARM 12.9.705 as proposed, but with the following changes, stricken matter interlined, new matter underlined:

12.9.705 PAYMENT BY DEPARTMENT (1) through (3) remain as proposed.
~~(4) For qualified upland game bird habitat enhancement projects sponsored by volunteer organizations, the department may reimburse for up to 110% of additional project material costs to encourage program participation.~~
(5) and (6) remain as proposed but are renumbered (4) and (5).

AUTH: 87-1-249, MCA
IMP: 87-1-248, MCA

3. The department has thoroughly considered the comments and testimony received. Seventeen people submitted comments during the comment period. A summary of the comments received and the department's responses are as follows:

Comment 1: The department received 13 comments in support of the rule proposal.

Response 1: The department appreciates the interest and participation in the rulemaking process.

Comment 2: Six people did not support funding the pheasant release program.

Response 2: The department is required by statute to fund pheasant releases.

Comment 3: One person supported the proposal if up to 33% of the land used for the Upland Game Bird Enhancement Program (UGBEP) project is set aside for public hunting.

Response 3: All lands actively enrolled in the UGBEP require a reasonable amount of free public upland game bird hunting. Each UGBEP contract defines the areas open to public hunting. Generally the amount of land open to public hunting is much greater than just the project area where the enhancement occurs.

Comment 4: One person expressed disappointment that the UGBEP is not implemented on small acreages.

Response 4: ARM 12.9.702(b) states that lands smaller than 100 acres may be considered if land with guaranteed public access is within the project area of influence.

Comment 5: One person provided clarification that the Natural Resources Conservation Service's cost list contains the actual average cost for practices and components.

Response 5: This clarification is acknowledged by the department and will be considered when developing cost share agreements.

Comment 6: One person stated that the rule addressing percentage of birds to be released should be deleted because studies conducted by USDA and MSU show the ideal ratio of hens and cocks is ten to one.

Response 6: The ratio stated in this comment may be ideal in pen-reared conditions or game farms. Spring sex ratios for wild pheasant populations generally average 2.5 hens per rooster, which is similar to current release ratio defined in current rule.

Comment 7: One person recommended that pheasant release dates be eliminated or modified.

Response 7: The purpose of pheasant releases is to establish pheasant populations. The department maintains that pheasant releases occurring between August 1 and September 15 have the greatest potential to help establish or augment populations.

Comment 8: One person commented that the department should determine the number of pheasants to be purchased at an earlier date.

Response 8: The change to ARM 12.9.602(d), changing the application deadline from May 15 to January 15, will allow the department to make the determination at an earlier date.

Comment 9: One person recommended that pheasant releases be allowed in Fergus, Richland, or Roosevelt counties.

Response 9: The department has not proposed to add Fergus, Richland, or Roosevelt counties into the pheasant release program in order to compare harvest statistics between counties that are stocked vs. not stocked, and to maintain control sites for possible future studies.

Comment 10: One person stated that the department should modify or establish study criteria to evaluate the success of the pheasant release program.

Response 10: The department has established study criteria; however, the department does not feel that it is necessary to conduct a study at this time.

Comment 11: One person commented ARM 12.9.602(p) pertaining to pen-reared pheasant health assessments, that the department should change "may be assessed" to "will be assessed." The same person commented that department staff should assess health at the production facility.

Response 11: Department staff always performs an ocular assessment of overall pheasant health and condition at the time of releases. If warranted, protocols identified by the Department of Agriculture-APHIS or similar regulating agency may be used by the department's wildlife veterinarian to determine pheasant health and condition.

Comment 12: One person was not comfortable with wording that eliminates department employee and allows a department representative to verify pheasant releases unless there is a requirement that the department representative be trained.

Response 12: A department representative may be an employee or contractor hired by the department. Contracted assistance for pheasant releases does include training to assure accurate counting and effective bird health assessments.

Comment 13: One person recommended that the department establish a priority system for funding pheasant releases based on habitat quality and prior release data.

Response 13: The department authorizes pheasant releases based on meeting minimal habitat requirements, as identified in the rule. Habitats that lack or only have limited characteristics of quality will not qualify for releases or will be assigned a reduced bird release allocation as fitting with those habitat characteristics. Funding options for pheasant releases are met with the three options identified in 12.9.602(3)(a) through (c).

Comment 14: One person did not support the rule to establish costs per ten-week-old pheasants and recommends contacting the commercial pheasant producers to

determine the cost to raise and deliver pheasants in comparison to the reimbursement amount.

Response 14: The department does contact commercial pheasant producers to determine the cost to raise pheasants. The determination for delivery costs are based on the current fiscal year federal mileage reimbursement rate established by the IRS. Polling the small number of pheasant raisers utilized in the pheasant release program to determine average cost has been criticized by some members of the public as a biased approach to obtain pheasant costs.

Comment 15: One person commented that 87-1-248, MCA refers to upland game birds yet proposed changes to ARM 12.9.606 violates this statute because the proposed rule only addresses release of pheasants.

Response 15: Section 87-1-249, MCA states the department shall adopt rules for the administration of the upland game bird enhancement program created in 87-1-246 through 87-1-249, MCA including the number of upland game birds to be released. At this time the department has chosen to only release pheasants but does have an active wild turkey trap and transplant program.

Comment 16: One person recommended no amendment or repealing all of ARM 12.9.606 because the programs are defined in statute.

Response 16: The purpose of the rule is to provide clarification and guidance on implementation of these administrative rules.

Comment 17: One person supported the proposed rule on supplemental feeding. One person did not support changes to the proposed supplemental feeding rule because Region 4 was removed from the eligibility area.

Response 17: The three counties eligible for supplemental feeding were selected due to frequency of extreme winter weather events.

Comment 18: One person did not support changes to the supplemental feeding rule because a portion of the bird release dollars funds the supplemental feeding program.

Response 18: Statute states that at least 15% of the funds collected under 87-1-246, MCA must be set aside each fiscal year for expenditures related to upland game bird releases. Supplemental feeding is considered an activity related to upland game bird releases.

Comment 19: One person did not support changes to the supplemental feeding rule because Roosevelt County is not eligible for pheasant releases yet may receive funding for supplemental feeding.

Response 19: The UGBEP Citizens' Advisory Council identified Sheridan, Daniels, and Roosevelt counties as eligible to receive funding for supplemental feeding after receiving a considerable amount of public review.

Comment 20: Two people stated the wording "will be disqualified" should remain in ARM 12.9.706 and not change to "may be disqualified," as it pertains to contract compliance.

Response 20: Revising the wording provides the department flexibility to maintain the initial terms of the UGBEP contract if unexpected events such as natural disasters, health issues, or other situations occur beyond the cooperators' control that under the current rule will render a contract noncompliant.

Comment 21: Two people support the inclusion of public lands as eligible criteria for the UGBEP funds. One person stated the department should not be entering into habitat contracts with other federal or state agencies.

Response 21: Partnerships with federal and state agencies promote habitat enhancement efforts on public lands that provide unlimited public access.

Comment 22: One person stated the process seemed very fast and the rule changes were not a quick read.

Response 22: Members of the public had 36 days to comment on the proposed adoption and amendments and opportunity to provide comment at eight hearings held across the state. This timeline exceeded the requirements of the Montana Administrative Procedure Act.

Comment 23: Two people stated effective winter cover needs further clarification through examples.

Response 23: Providing specific examples of effective winter cover in rule may constrict the biologists' abilities to conduct habitat assessments in the field. Examples and guidance will be defined in the UGBEP Policy Manual and through less formal means for landowners and department staff.

Comment 24: One person stated that supplemental feeding dates should end in May after winter weather ends.

Response 24: The intent of supplemental feeding is to provide pheasants food when it's inaccessible by deep snow, which is generally over by March. After March, snow cover is reduced and food is accessible.

Comment 25: One person opposed eliminating the language prohibiting the establishment of shelterbelts within 400 feet of an occupied building.

Response 25: The rule language removed is unnecessary because it repeated

statutory language that prohibits the establishment of shelterbelts within 400 feet of occupied buildings or outbuildings used by livestock.

Comment 26: One person commented that the 10% winter cover should be contained in the project area not within a mile of the release site.

Response 26: Winter cover within one mile of the release site may be beneficial to pheasant survival whether located on the project area or on adjoining lands.

Comment 27: One person stated that ARM 12.8.705(4) may violate state procurement laws because the department cannot pay an additional ten percent above actual costs.

Response 27: The department has eliminated the language referring to payment for up to 110% of costs and will only pay up to 100% of actual costs.

Comment 28: One person requested that the department stop ignoring the wolf problem.

Response 28: The comment is outside the scope of this rulemaking authority.

Comment 29: One person recommended that pheasants be released on Canyon Ferry Wildlife Management Area.

Response 29: The comment is outside the scope of this rulemaking authority.

/s/ Joe Maurier
Joe Maurier, Director
Department of Fish, Wildlife and Parks

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State August 27, 2012

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

In the matter of the amendment of) NOTICE OF DECISION ON
ARM 12.6.2204 and 12.6.2208) PROPOSED RULE ACTIONS
regarding adding Tilapia as a)
controlled species)

TO: All Concerned Persons

1. On May 24, 2012 the Fish, Wildlife and Parks Commission published MAR Notice No. 12-377 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1019 of the 2012 Montana Administrative Register, Issue Number 10.
2. A public hearing on the notice of proposed amendment of the above-stated rules was held on June 14, 2012.
3. Based on public comments and further analysis of the potential risk if Tilapia were to escape or be illegally released in Montana waters the commission did not adopt the proposed amendments.

/s/ Joe Maurier
Joe Maurier, Secretary
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State August 27, 2012.

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

In the matter of the adoption of a)
temporary emergency rule closing the) NOTICE OF ADOPTION OF A
Beartooth Wildlife Management Area) TEMPORARY EMERGENCY RULE
in Lewis and Clark County)

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of a temporary emergency rule:

- (a) A wildfire is burning in the Beartooth Wildlife Management Area.
- (b) Persons recreating on the Beartooth Wildlife Management Area would be subjected to erratic and unpredictable fire conditions posing a danger of:
 - (i) becoming surrounded and trapped by the fire;
 - (ii) becoming a potential burden to rescue and fire crews; or
 - (iii) death.
- (c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 17 of the 2012 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 21, 2012, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective August 23, 2012 when this rule notice is filed with the Secretary of State.

4. The text of the temporary emergency rule provides as follows:

RULE I BEARTOOTH WILDLIFE MANAGEMENT AREA TEMPORARY EMERGENCY CLOSURE (1) The Beartooth Wildlife Management Area is located in Lewis and Clark County.

(2) The Beartooth Wildlife Management Area is closed to all public occupation, hunting, and recreation.

(3) This rule is effective as long as there is fire threatening the Beartooth Wildlife Management Area and until the department repeals this rule.

(4) This rule will expire as soon as the department determines the Beartooth Wildlife Management Area is again safe for occupation and recreation. This will depend on the extent and duration of the fire in the area. Signs restricting use of the Beartooth Wildlife Management Area will be removed when the rule is no longer effective.

AUTH: 23-1-106, MCA
IMP: 23-1-106, MCA

5. The rationale for the temporary emergency rule is as set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Legal Unit, Department of Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 454-5845; fax (406) 761-8477; or e-mail jesssnyder@mt.gov. Any comments must be received no later than October 5, 2012.

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

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

/s/ David Risley

David Risley, Acting Director
Department of Fish, Wildlife and Parks

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State August 23, 2012.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) CORRECTED NOTICE OF
18.8.511A, pertaining to motor carrier) AMENDMENT
services)

TO: All Concerned Persons

1. On April 26, 2012 the Department of Transportation published MAR Notice No. 18-135 pertaining to the proposed amendment of the above-stated rule at page 819 of the 2012 Montana Administrative Register, Issue Number 8. On July 12, 2012 the department published the notice of adoption at page 1350 of the 2012 Montana Administrative Register, Issue Number 13.

2. The correction to the citation was inadvertently omitted from the proposed rule notice published as MAR Notice No. 18-135, but is being corrected on this correction notice. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

18.8.511A WHEN FLAG VEHICLES ARE REQUIRED (1) through (4) remain as adopted.

AUTH: 61-10-155, MCA

IMP: 61-10-102, 61-10-121, 61-10-122, 61-10-123, 61-10-124, MCA

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State August 27, 2012.

BEFORE THE BOARD OF REALTY REGULATION
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF AMENDMENT AND
ARM 24.210.301 definitions,)	ADOPTION
24.210.401 fee schedule, 24.210.426)	
trust account requirements,)	
24.210.430 internet advertising rules,)	
24.210.601, 24.210.602, 24.210.604,)	
24.210.610, 24.210.611, 24.210.624,)	
24.210.625, 24.210.635, 24.210.641,)	
24.210.660, 24.210.661, 24.210.667)	
and 24.210.674 brokers and)	
salespersons, 24.210.801,)	
24.210.803, 24.210.805, 24.210.807,)	
24.210.809, 24.210.812, 24.210.828,)	
24.210.829, 24.210.835 and)	
24.210.840 property management,)	
and the adoption of NEW RULE I)	
public participation, and NEW RULES)	
II and III course provider)	

TO: All Concerned Persons

1. On March 22, 2012, the Board of Realty Regulation (board) published MAR notice no. 24-210-37 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 556 of the 2012 Montana Administrative Register, issue no. 6.

2. On April 17, 2012, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the April 25, 2012, deadline.

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

COMMENT 1: A commenter recommended the board clarify the definition of "cancellation" in ARM 24.210.301(7).

RESPONSE 1: The board acknowledges the comment, but did not find the definition confusing and sees no need for further clarification.

COMMENT 2: One commenter pointed out that the proposed amendments to the trust account requirements in ARM 24.210.426(4)(f) and 24.210.805(7) could cause confusion about the licensees using trust account funds to pay personal indebtedness. Noting that trust funds and trust accounts are not the same thing, the

commenter stated that changing "trust account" to "trust funds" may lead licensees to believe they may use funds from the trust account to pay for personal indebtedness.

RESPONSE 2: The board agrees with the comment and is amending both rules to eliminate the confusion and clarify the board's intent that at no time may trust funds or money in the trust account be used to pay personal indebtedness.

COMMENT 3: Several commenters suggested clarifying the trust account amendments in ARM 24.210.426(4)(i)(vii) and 24.210.805(9)(d)(iii) and requiring verification of specific funds deposited before those funds could be disbursed.

RESPONSE 3: The board discussed several circumstances where a licensee was caught with a bad check, which prompted this rule amendment. For instance, a scam exists where a licensee receives a check and, shortly after, a refund is requested. The refund is issued before the licensee determines that the initial check funds are no good. The licensee has either commingled funds or their trust account is negative. The board believes that the amendments, with regard to verifying funds, are protective of the consuming public as well as licensees.

COMMENT 4: One commenter stated that the proposed amendments to ARM 24.210.426(7) are unclear as to how long certain trust account documentation records must be maintained if the funds are not held in a broker's trust account and asked what documentation must be maintained to show proof of delivery.

RESPONSE 4: The board acknowledges the comment, but did not find the amendments confusing and sees no need for further clarification.

COMMENT 5: Several commenters agreed with the grammatical changes proposed for internet advertising in ARM 24.210.430, but suggested the board consider reviewing those rules in their entirety and amending them at some time in the future.

RESPONSE 5: The board appreciates all comments made during rulemaking.

COMMENT 6: Several commenters expressed concern about the Internet advertising amendments in ARM 24.210.430(7) and suggested the board revise or remove them. The commenters stated it is virtually impossible to get information changed on third party web sites, as once the information is originally posted by the licensee, it is out there for anyone to use. Licensees no longer have the ability to change or update the information and should not be held responsible.

RESPONSE 6: The board acknowledges the comments and is amending this rule exactly as proposed.

Comments 7 through 16 apply to ARM 24.210.601:

COMMENT 7: A number of commenters supported the concept of a temporary supervising broker in ARM 24.210.601, but suggested temporary supervising brokers exist on a constant basis, without time limitations, and always on file with the board. The commenters suggested a one-time fee for this arrangement, activating the temporary supervising broker by written notification to the board, and stated that no salesperson should have to pay a fee.

RESPONSE 7: The board appreciates all comments made in the rulemaking process, but does not agree. Individual circumstances change and agreements on file for a length of time will age and may not apply in the future. Further, the requirements as proposed by the board have the effect of ensuring that all parties are timely made aware and in agreement regarding a transfer.

COMMENT 8: A commenter observed that while a release from a supervising broker is required in ARM 24.210.601(1) for a salesperson to transfer, there is no definition of "release." The commenter was unclear what would constitute a release and what form it would take.

RESPONSE 8: The board acknowledges the comment, but did not find the amendments confusing and sees no need for further clarification.

COMMENT 9: Several commenters questioned whether the board has the authority in ARM 24.210.601(10) to require a broker signature on a listing agreement negotiated by a salesperson in order for the listing to be valid. One commenter noted that "listing" is contained in the statutory definition of "broker," and asked if that was a sufficient statutory basis for a rule that stated only brokers could list property.

RESPONSE 9: The board concluded that this amendment does not substantially change the existing requirement, but simply adds clarity to the existing requirement. The board currently has the authority to require broker signature on listings and only brokers are defined to include doing listings.

COMMENT 10: A commenter expressed confusion in ARM 24.210.601(14) regarding the timing of the cancellation of a salesperson's license under different circumstances. It appears a sales license is cancelled immediately if it is voluntarily returned by the supervising broker, but does not appear to be cancelled for ten days if the board notifies the salesperson of the broker's failure to renew. The commenter suggested the board clarify that a salesperson may not conduct licensed activity after being notified that a supervising broker has failed to renew.

RESPONSE 10: The board agrees with the commenter and is amending the rule to eliminate confusion and add clarity to the requirements of a salesperson.

COMMENT 11: Several commenters noted the recommended mechanism available for a salesperson who does not want to be transferred to a temporary supervising broker, but that there does not appear to be any requirement for a salesperson to be

informed of the temporary transfer. The commentators suggested a process for such notification.

RESPONSE 11: The board agrees that the broker has the responsibility to notify the salespeople when they are being temporarily transferred. The board is amending ARM 24.210.601(16)(a) to ensure the notification of the salesperson.

COMMENT 12: Several commenters questioned the amendments to ARM 24.210.601, specifically (16) and (17) that reference ARM 24.210.611, since temporary supervising brokers are not found in ARM 24.210.611, either in the current rule text or proposed additional language.

RESPONSE 12: The board agrees that the citations to ARM 24.210.611 are incorrect and inadvertent typographical errors. The references should all be to sections within ARM 24.210.601 and the board is amending this rule accordingly.

COMMENT 13: One commenter suggested the board define "broker of record" as used in ARM 24.210.601(16)(c), to describe the current supervising broker.

RESPONSE 13: The board appreciates the comment, but does not believe there is confusion and sees no need for clarification.

COMMENT 14: A commenter questioned what would happen to a salesperson that had been temporarily transferred to a temporary supervising broker for the maximum time within a 12-month period, and then transferred to a new supervising broker. The commenter asked if the salesperson would be prohibited from having a temporary supervising broker if the new broker needed to be away for a period of time?

RESPONSE 14: The board intends that the clock will start over with a new supervising broker of record in such an instance, and is amending ARM 24.210.601(16)(c) accordingly.

COMMENT 15: Several commenters opposed restricting the temporary supervising broker transfer of a salesperson to 60 days in any 12-month period in ARM 24.210.601(16), stating that it will not allow for medical conditions that would require the supervising broker be out for longer periods of time.

RESPONSE 15: The board believes that the exception found in ARM 24.210.601(17) addresses these concerns.

COMMENT 16: One commenter requested an alternative to the requirement in ARM 24.210.601(16)(g) of transferring within three business days prior to the effective date of the temporary transfer. The commenter stated that, in the case of death or incapacitation, three days might not be possible.

RESPONSE 16: The board believes these concerns are addressed in ARM 24.210.601(17).

COMMENT 17: Several commenters questioned the meaning of "initiated" in new language added to ARM 24.210.624(5) that provides inactive licensees may only receive a commission for a real estate transaction if the transaction was initiated prior to the licensee going inactive. The commenters believe the phrase is vague and questioned what acts would indicate initiation of a transaction.

RESPONSE 17: The board agrees with the comments and is not amending the rule at this time.

Comments 18 through 21 apply to ARM 24.210.641:

COMMENT 18: One commenter stated that the board is passing unnecessary requirements on supervising brokers in ARM 24.210.641 by requiring that licensees include their license number in advertising, dictating the business name a broker can use in advertising, restricting business by not letting brokers communicate with potential buyers until a buyer broker contract is signed, requiring that licensees document the disclosure of available information on sexual offenders, eliminating important topics from the continuing education topic list, and requiring the core course without continuing education credit.

RESPONSE 18: The board concluded that requiring the license number does not add clarity for the public and, with the new numbering system, it will be expensive for licensees to include their new license number. The board also acknowledges that including the agency name does not add clarity as the licensee must identify that they hold a license when advertising. The board agrees with the comment and is not amending ARM 24.210.641(5)(ag) at this time. To mirror this change, the board is also amending ARM 24.210.301(20) in the same manner.

The board notes that there seems to be a misunderstanding of the proposed amendment to ARM 24.210.641(5)(am), and amending as proposed could result in a situation that is worse than the current confusion. The proposed amendment was an attempt to put a defining line on when a buyer broker agreement is required, with the intent to have the buyer sign a buyer broker agreement prior to coming to the closing table. The board agrees that the concept is worth pursuing, but the amendment needs further work. The board is not amending (5)(am) at this time.

The board agrees with the comments on ARM 24.210.641(5)(aw) regarding the requirement to document compliance with 37-51-105, MCA. The statute is very specific about licensee requirements and the proposed amendment appears to add additional unintended licensee duties. The board is not adding (5)(aw) to the rule at this time.

The comments on the continuing education topic list and core course rules do not apply to this rules project, as they were not included in the proposal notice.

COMMENT 19: Several commenters opposed the proposed requirement in ARM 24.210.641(5)(ag)(ii) that all advertising by a brokerage company that does not

include "realty" or "real estate" must include the tag "a real estate agency." The commenters stated this will require brokerage companies to incur substantial expense to change their ads. Commenters asked the board to add "properties" since there are many real estate companies whose name includes "property" or "properties," but not "realty" or "real estate," or require that ads disclose that the advertising is placed by a real estate brokerage company, but allow discretion on how the disclosure is made.

RESPONSE 19: The board agrees and is not amending (5)(ag) at this time.

COMMENT 20: Several commenters opposed the proposed amendment to ARM 24.210.641(5)(am) that it is unprofessional conduct for licensees to offer guidance, direction, or advice to a buyer without a buyer broker agreement. The commenters stated the rule is vague, ambiguous, and could be interpreted to include acts that would not necessarily involve a licensee functioning as a buyer broker. The prohibited activities do not appear to be limited to actions done in conjunction to a real estate transaction. Some commenters asserted that the timing of the buyer broker agreement requirement should reflect when a licensee is actually acting as a buyer broker, and not just providing more generalized information. Some commenters observed that the proposed amendment places a more difficult, or even impossible responsibility to timely disclose and document disclosure of sexual or violent offender registration information on listing agents.

RESPONSE 20: The board agrees with the commenters and is not amending (5)(am) at this time.

COMMENT 21: Several commenters requested clarification of "incidental property management" as proposed in ARM 24.210.641(5)(z). When a listing remains on the market for a long time, a seller agent may be asked to lease out the property, pending sale. The proposed amendment would require those real estate licensees to also comply with all property management requirements, except certain advertising rules in certain circumstances. A few commenters asked the board to just eliminate the entire amendment.

RESPONSE 21: The board agrees with the comments and is amending ARM 24.210.641(5)(z) to clarify that real estate licensees do not have to comply with the property management advertising rules when property management is performed in conjunction with a listing.

COMMENT 22: One commenter opposed requiring all licensees to complete the annual board-mandated core education course in ARM 24.210.667 and provided several comments the commenter had made in previous rule projects regarding licensee accountability to the public. The commenter stated that the current continuing education requirements are sufficient if licensees are held responsible for their own actions.

RESPONSE 22: The board acknowledges the comment, but notes that the comment does not relate to this rules notice.

COMMENT 23: One commenter objected to the elimination of carry over hours in ARM 24.210.667 and suggested that carry over hours could only count as elective hours. The commenter opined that all licensees are being punished due to the actions of a few who cause problems and asserted that the board is overzealous in protecting consumers.

RESPONSE 23: The board appreciates all comments made during the rulemaking process, but concluded these comments seem to demonstrate a misunderstanding of this rule amendment. The board is not amending carry over provisions in this proposal and notes that carry over hours have been disallowed since 2007. The board is now proposing to eliminate a duplicative statement of the prohibition in (8) of this rule, which is not a substantial change. The board notes that its primary function is to protect the public health, safety, and welfare.

COMMENT 24: One commenter stated that the board needs to be aware of consumer needs and not limit a real estate licensee's marketing exposure for client benefits. The commenter recommended that the board table consideration of the temporary supervising broker until they can establish a focus group and encouraged the board to get back to business and avoid sidetracking, which is distracting from the big picture.

RESPONSE 24: The board appreciates all comments made during the rulemaking process, and notes that a task force was created prior to the drafting and eventual proposal of these rule amendments. The proposed amendments are the result of the task force's efforts. The board notes that its primary function is to protect the public health, safety, and welfare.

COMMENT 25: One commenter stated that if the board is going to mandate minimum services that must be provided by licensees, the board should tell licensees how much to charge for the services. The commenter suggested the board create a fee schedule similar to one published by the State Auditor for title insurance companies.

RESPONSE 25: The board acknowledges the comment, but notes that it does not relate to this rules notice. Entry-only rules were already adopted in a previous rule package.

4. The board has amended ARM 24.210.401, 24.210.430, 24.210.602, 24.210.604, 24.210.610, 24.210.611, 24.210.625, 24.210.635, 24.210.660, 24.210.661, 24.210.667, 24.210.674, 24.210.801, 24.210.803, 24.210.807, 24.210.809, 24.210.812, 24.210.828, 24.210.829, 24.210.835, and 24.210.840 exactly as proposed.

5. The board has adopted NEW RULES I (24.210.202), II (24.210.666), and III (24.210.834) exactly as proposed.

6. The board has amended ARM 24.210.301, 24.210.426, 24.210.601, 24.210.641, and 24.210.805, with the following changes, stricken matter interlined, new matter underlined:

24.210.301 DEFINITIONS (1) through (19) remain as proposed.

(20) "Licensee identification" as used in this chapter means a written disclosure of the licensee's name, ~~license number~~, and identifying that the advertisement is made by a real estate licensee or by a brokerage company.

(21) through (29) remain as proposed.

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) through (4)(e) remain as proposed.

(f) No payments of personal indebtedness of the broker shall be made from a trust account or trust funds;

(g) through (9) remain as proposed.

24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) through (13) remain as proposed.

(14) A salesperson whose supervising broker has failed to renew or reinstate the broker's expired broker license or supervising broker endorsement must request to be placed on inactive status or transfer their salesperson license to another supervising broker within ten days of being notified by the board that their supervising broker's broker license or supervising broker endorsement has expired. ~~Failure to transfer to a new supervising broker within ten days will result in cancellation of their active license.~~ A salesperson shall not conduct licensed activity during this unsupervised period.

(15) and (16) remain as proposed.

(a) The temporary transfer of supervision must be in writing and must be provided to the salesperson by the broker of record. The writing must include:

(i) through (16)(b) remain as proposed.

(c) An existing supervising broker may not transfer temporary supervision of a salesperson for more than 60 days in any 12-month period, and any individual salesperson may not be temporarily supervised by anyone for more than 60 days in any 12-month period, unless transferred to a new supervising broker of record. This limit may not be extended without written approval by the board, which must be based on good cause. A temporary supervising broker may exceed 60 days of temporary supervision in any 12-month period. A temporary supervising broker is not the "broker of record" of any salesperson who is temporarily transferred to the temporary supervising broker.

(d) and (e) remain as proposed.

(f) Temporary transfers of supervision may be extended beyond the effective termination date subject to the limitation of ~~ARM 24.210.644~~ (16)(c).

(g) through (17)(b) remain as proposed.

(c) Supervision of the salesperson may be transferred to a temporary supervising broker as provided in ~~ARM 24.210.611 (16)~~. However, the authorization set forth in ~~ARM 24.210.611 (16)(a)~~ shall not be required.

(18) A salesperson who does not wish to be supervised by a temporary supervising broker may place their salesperson license on inactive status or transfer their license to another supervising broker as provided in ~~ARM 24.210.604~~ this rule.

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(y) remain as proposed.

(z) failing, while acting as a property manager as defined in 37-51-102, MCA, to abide by the requirements of ~~37-51-607~~, Title 37, chapter 51, part 6, MCA, and the requirements of the Board of Realty Regulation's rules for property management as set forth in ARM 24.210.805 and 24.210.828, except for the advertising requirements of. ~~Incidental property management duties shall not require compliance with ARM 24.210.828(3)(u);~~

(aa) through (af) remain as proposed.

(ag) failing to disclose in advertising ~~either:~~

(i) the licensee's name, ~~license number~~, and identifying that the advertisement is made by a real estate licensee; or

(ii) that the advertising is made by a brokerage company. ~~If the company name does not include "realty" or "real estate," the advertising must include the phrase "a real estate agency";~~

(ah) through (al) remain as proposed.

(am) acting as offering real estate guidance, direction, or advice to a buyer agent without a written buyer broker agreement;

(an) through (av) remain as proposed.

~~(aw) failure to document compliance with 37-51-105, MCA, prior to or contemporaneously with an offer for the purchase and sale, rental, or lease of inhabitable real property;~~

(ax) and (ay) remain as proposed, but are renumbered (aw) and (ax).

(6) and (7) remain as proposed.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT REQUIREMENTS (1) through (6) remain as proposed.

(7) Except for personal funds referenced in (3), no payments of personal indebtedness of the property manager shall be made from such trust accounts or trust funds.

(8) through (15) remain as proposed.

7. The board is not amending ARM 24.210.624.

BOARD OF REALTY REGULATION
C. E. "ABE" ABRAMSON, CHAIRPERSON

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

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

Certified to the Secretary of State August 27, 2012

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT,
ARM 24.351.201, 24.351.204,) ADOPTION, AND REPEAL
24.351.211, 24.351.224 and)
24.351.227 weighing and measuring)
devices, 24.351.301 and 24.351.321)
packaging and labeling, 24.351.401)
and 24.351.411 petroleum,)
24.351.1104, 24.351.1111 and)
24.351.1115 voluntary registration,)
the adoption of NEW RULE I)
certification of stationary standards,)
and the repeal of 24.351.221)
weighing device license transfer)

TO: All Concerned Persons

1. On July 12, 2012, the Department of Labor and Industry (department) published MAR notice no. 24-351-267 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 1323 of the 2012 Montana Administrative Register, issue no. 13.

2. On August 2, 2012, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. No comments were received by the August 10, 2012, deadline.

3. In preparing this notice, department staff discovered a title error had been published in the proposal notice. In the proposal notice header, ARM 24.351.1111 was incorrectly published as ARM 44.351.1111, which is not an existing rule number within the ARM. This final notice reflects the correction to the header.

4. The department has amended ARM 24.351.201, 24.351.204, 24.351.211, 24.351.224, 24.351.227, 24.351.301, 24.351.321, 24.351.401, 24.351.411, 24.351.1104, 24.351.1111, and 24.351.1115 exactly as proposed.

5. The department has adopted NEW RULE I (24.351.203) exactly as proposed.

6. The department has repealed ARM 24.351.221 exactly as proposed.

DEPARTMENT OF LABOR AND INDUSTRY

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

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

Certified to the Secretary of State August 27, 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 and 37.80.306)
pertaining to child care policy manual)
revisions)

TO: All Concerned Persons

1. On July 12, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-591 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1333 of the 2012 Montana Administrative Register, Issue Number 13.

2. The department has amended ARM 37.80.101 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:

37.80.306 LEGALLY CERTIFIED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES (1) through (4) remain as proposed.

~~(5) A conviction for driving under the influence of alcohol more than three years prior to the application date does not constitute grounds for denial.~~ The legally certified provider's conviction for driving under the influence of alcohol or drugs more than three years prior to the application date does not constitute grounds for denial. Convictions of driving under the influence for other adults within the household that occur within three years of the application will not be grounds for denial as long as the other adults do not transport children while in the care of the legally certified provider.

(6) Legally certified providers must also meet the following requirements to be certified under this chapter:

(a) through (e) remain as proposed.

(f) Only legally certified providers may transport children while in their care.

(7) remains 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

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

COMMENT #1: The department received a comment that the proposed rule could result in the revocation of a certificate if an adult in the home who is not the child care provider has a DUI that is less than three years old.

RESPONSE #1: The department agrees that the proposed rule could have that result. It was the intention of the department to preclude any individual with a DUI conviction within the prior three years from transporting children while in the care of a LCP. The final rule has been amended to make that clarification.

/s/ GERALYN DRISCOLL
Rule Reviewer

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

Certified to the Secretary of State August 27, 2012

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.26.310 relating to water's-)
edge election)

TO: All Concerned Persons

1. On July 26, 2012, the department published MAR Notice No. 42-2-881 regarding the proposed amendment of the above-stated rule at page 1521 of the 2012 Montana Administrative Register, Issue No. 14.

2. No comments were received. Therefore, the department amends the rule as proposed.

3. 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 "Current Rule Actions – Published Notices" 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 August 27, 2012

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA
AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|------------------|---|
| Known
Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2012. This table includes those rules adopted during the period April 1, 2012, through June 30, 2012, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2012, 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 2012 Montana Administrative Register.

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