

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 18

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.59.1728 and adoption of New Rule I) AMENDMENT AND ADOPTION
pertaining to written exemption form for)
requesting a mortgage licensing) NO PUBLIC HEARING
exemption) CONTEMPLATED

TO: All Concerned Persons

1. On October 29, 2012, the Department of Administration proposes to amend and adopt the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on October 11, 2012, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.1728 ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NMLS (1) ~~The Nationwide Mortgage Licensing System~~ NMLS Policy Guidebook dated ~~January 25, 2010~~ April 16, 2012, is incorporated ~~approved~~ and adopted by reference. It can be found at <http://mortgage.nationwidelicingsystem.org/slr/common/policy/Pages/default.aspx>.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

(a) ~~MU1 Uniform Mortgage Lender/Mortgage Broker form~~ NMLS Company Form dated ~~January 25, 2010~~ March 19, 2012;

(b) ~~MU2 Uniform Mortgage Biographical Statement & Consent Form~~ dated ~~January 25, 2010~~;

(c) ~~MU3 Uniform Mortgage Branch Office form~~ NMLS Branch Form dated ~~January 2, 2008~~ March 19, 2012; and

(d) ~~MU4 Uniform Individual Mortgage License/Registration & Consent NMLS Individual Form~~ dated ~~January 25, 2010~~ March 19, 2012;

(d) Mortgage Uniform 1 Registry (MU1R) version 1 dated January 27, 2011;

(e) Mortgage Uniform 4 Registry (MU4R) version 1 dated January 27, 2011;

(f) Uniform Company Renewal Checklist dated September 15, 2010; and

(g) Uniform Individual Renewal Checklist dated September 15, 2010.

(3) Copies of the NMLS forms are available on the department's NMLS web site ~~www.banking.mt.gov~~ www.mortgage.nationwidelicencingsystem.org for review and informational purposes only. All standardized forms to be submitted to the department must be accessed ~~through NMLS~~ and submitted electronically through the NMLS. Supplemental hard copy materials required for verification of qualifications must be submitted to the department through the NMLS ~~Supplemental hard copy materials required for verification of qualifications must be submitted to the department at Division of Banking and Financial Institutions, 301 S. Park Ave., P.O. Box 200546, Helena, MT 59620-0546.~~

AUTH: 32-9-130, MCA

IMP: 32-9-105, ~~32-9-107~~, 32-9-112, ~~32-9-114~~, 32-9-117, ~~32-9-118~~, ~~32-9-127~~, 32-9-130, MCA

STATEMENT OF REASONABLE NECESSITY: Pursuant to 32-9-105(1), MCA, applicants for a state license under the Montana Mortgage Act must apply using applications approved by the NMLS. The rule amendments proposed are necessary because the NMLS policy guidebook was updated on April 12, 2012. The intent of the rule is to utilize the current version of the guidebook, not the prior version. In addition, correction of the location of the NMLS forms (the NMLS web site, not the department web site) needs to be made clear. All licensing is done through the NMLS. These forms cannot be printed in hard copy and mailed to the department in order to apply for a license. All standardized forms submitted to the department for licensing must be submitted electronically through the NMLS.

The two new NMLS exemption forms, MU1R and MU4R, are being adopted by reference as the department's required forms. The NMLS renewal forms are also being adopted by reference. The other forms have been updated since they were last adopted by reference. The department is adopting the current version by reference.

Sections 32-9-107 and 32-9-118, MCA, are being deleted because those sections are not being implemented by this rule. Sections 32-9-114 and 32-9-127, MCA, have been repealed and can no longer be implemented by this rule. Section 32-9-130, MCA, is being added because that statute requires the department to adopt rules prescribing forms for applications.

During the comment period of this rulemaking, links to the documents being adopted by reference will be available on the department's web site located at <http://banking.mt.gov/mortgage.mcp.x>. In order to comply with 2-4-307(3), MCA, the links to the documents being adopted by reference will be available for public comment on the department web site. However, such documents cannot be used for licensing purposes and are available only for public comment purposes.

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

NEW RULE I WRITTEN EXEMPTION FORM FOR REQUESTING A LICENSING EXEMPTION (1) The written exemption form for requesting exemptions under 32-9-104(1)(b), MCA, is the Mortgage Uniform 1 Registry (MU1R)

version 1, which is filed with the NMLS, www.mortgage.nationwidelicencingsystem.org.

(2) The written exemption form for requesting exemptions under 32-9-104(1)(c), MCA, is the Mortgage Uniform 4 Registry (MU4R) version 1, which is filed with the NMLS, www.mortgage.nationwidelicencingsystem.org.

(3) These forms are adopted and incorporated by reference in ARM 2.59.1728.

AUTH: 32-9-130, MCA

IMP: 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-104(2), MCA, requires the department to create a form for requesting an exemption from state licensure. Two categories of exemptions, one for depository institutions and one for individuals employed by depository institutions, are required to be registered through the NMLS. See 32-9-103(30) and 32-9-104(1)(b) and (1)(c), MCA. Rather than duplicate the registration form through NMLS with another exemption form, the department adopts the registration form filed with NMLS as its form for requesting an exemption from licensure under Montana law. The department believes the NMLS form covers all the relevant areas, and no purpose would be served by requiring that a separate state form be completed.

To file an MU1R through the NMLS, an entity must be one identified in 32-9-103(30)(a)(i) through (iii), MCA. If the depository institution or its subsidiary has filed a MU1R, and received a unique identifier assigned by the NMLS, that is sufficient for purposes of state law to meet the exemption in 32-9-104(1)(b), MCA. Likewise, an employee of a depository institution or its subsidiary that has registered by filing an MU4R through the NMLS and been assigned a unique identifier has already submitted a form to the NMLS that is sufficient for purposes of state law to meet the exemption under 32-9-104(1)(c), MCA.

During the comment period of this rulemaking, links to the documents being adopted by reference will be available on the department's web site located at <http://banking.mt.gov/mortgage.mcp.x>. In order to comply with 2-4-307(3), MCA, the links to the documents being adopted by reference will be available for public comment on the department web site. However, such documents cannot be used for licensing purposes and are available only for public comment purposes.

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 Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov, and must be received no later than 5:00 p.m., October 19, 2012.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any

written comments to Kelly O'Sullivan at the above address no later than 5:00 p.m., October 19, 2012.

7. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those has been determined to be 112 persons based on the total number of mortgage entities and mortgage loan originators licensed by the State of Montana.

8. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this Proposal Notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor, Representative Walt McNutt, was contacted by mail on May 20, 2011.

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 September 10, 2012.

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

In the matter of the amendment of)	NOTICE OF PUBLIC HEARING ON
ARM 24.156.2701, 24.156.2705,)	PROPOSED AMENDMENT AND
24.156.2711, 24.156.2713,)	ADOPTION
24.156.2715, 24.156.2717,)	
24.156.2719, 24.156.2731,)	
24.156.2732, 24.156.2741,)	
24.156.2745, 24.156.2751,)	
24.156.2754, 24.156.2757,)	
24.156.2761, 24.156.2771, and)	
24.156.2775 emergency medical)	
technicians, and the adoption of NEW)	
RULES I ECP endorsement)	
application, II continuing education)	
requirements, III ECP post course)	
requirements, IV obligation to report)	
to the board, and V complaints)	

TO: All Concerned Persons

1. On October 19, 2012, at 1:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Medical Examiners (board) no later than 5:00 p.m., on October 15, 2012, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Medical Examiners, 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 dlibsmed@mt.gov.

3. GENERAL REASONABLE NECESSITY: In 2010, the EMT Medical Director Committee brought to the board's attention the need to align Montana's rules with changes to the National Registry of Emergency Medical Technicians (NREMT) terminology that will become effective on January 1, 2013. Additionally, the proposed amendments and new rules comply with the EMS Educational Agenda for the Future promulgated by the National Highway Traffic Safety Administration (NHTSA), the national agency that sets standards for EMT training and education.

Throughout the past year, board staff and the newly hired State EMT Medical Director traveled throughout Montana and presented these amendments to interested parties, received comments and feedback, and successfully educated

EMTs and EMS providers on these necessary updates. Among others, the proposed changes update to current terminology and processes, delete unnecessary or redundant sections, and amend rules for accuracy, consistency, and ARM formatting requirements. While NREMT is currently required for licensure, it is not a government agency with legislatively mandated controlling authority over testing. The board concluded that these rule amendments are necessary to ensure that Montana maintains the ability to educate and test its licensed EMTs, if necessary. The board points out that drafts of these proposed rules have been reviewed and discussed at full board meetings a minimum of three times, and at which meetings the Medical Director Committee also presented information about the evolution of EMT training.

Accordingly, the board has determined it is reasonably necessary to adopt New Rules I through V and generally amend the emergency medical technician rules at subchapter 27 at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.156.2701 DEFINITIONS (1) For purposes of the rules set forth in this subchapter, the following definitions apply:

~~(4)~~ (a) "Advanced life support" or "ALS" means any provider that functions at any endorsement level above EMT-B or EMT.

~~(2)~~ (b) "Approved course" means a course of initial instruction that meets the specifications and requirements for a particular level ~~or endorsement for EMT of ECP~~ training approved by the board or its designee.

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

~~(4)~~ (d) "Basic life support" or "BLS" means any provider that functions at the endorsement level of:

~~(a)~~ (i) EMT-F or EMR;

~~(b)~~ (ii) EMT-F or EMR with any endorsements; or

~~(c)~~ (iii) EMT-B or EMT without any endorsements.

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

~~(6)~~ (f) "Clinical experience" means supervised instruction, observation, ~~and or~~ practice in a patient care setting as part of an approved course or program.

~~(7)~~ (g) "Clinical preceptor" means an individual trained to a level greater than the student, who is responsible for supervising and teaching the student in a clinical setting in an approved course or program, under the supervision of the medical director or lead instructor in the case of an EMT-basic course or EMT course after December 31, 2012.

~~(8)~~ (h) "Curriculum" means the combination of ~~instructor lesson plans, course guides, and student study guides~~ the National EMS Educational Standards and the Instructor Guidelines prepared by the United States Department of Transportation (USDOT) ~~and commonly known as the "National Standard Curriculum" (NSC)~~.

(9) remains the same, but is renumbered (i).

~~(10)~~ (j) "Emergency medical technician" ~~or "EMT"~~ means any ~~out of hospital~~ out-of-hospital emergency care ~~personnel~~ provider or "ECP" licensed by the board.

(41) (k) "Emergency medical technician - basic" or "EMT-B" means an individual ~~who is~~ licensed by the board as an EMT-B or, after January 1, 2013, as an "emergency medical technician" or "EMT".

(42) (l) "Emergency medical technician - first responder" or "EMT-F" means an individual ~~who is~~ licensed by the board as an EMT-F or, after January 1, 2013, as an "emergency medical responder" or "EMR".

(43) (m) "Emergency medical technician - intermediate" or "EMT-I" means an individual ~~who is~~ licensed by the board as an EMT-I or, after January 1, 2013, as an "advanced emergency medical technician" or "AEMT".

(44) (n) "Emergency medical technician - paramedic" or "EMT-P" means an individual ~~who is~~ licensed by the board as an EMT-P or, after January 1, 2013, as a "paramedic".

(o) "Endorsement" means a defined set of skills and knowledge that expands the scope of practice of the ECP. The medical director grants permission for an ECP to utilize an endorsement, provided the specific endorsement is identified on the ECP's license.

(45) (p) "Lead instructor" means a person who is licensed by the board, attended a training program conducted by the board, and is authorized to offer and conduct EMT ECP courses. The lead instructor is under the supervision of the board for BLS courses and under the supervision of the board and medical director for ALS courses.

(46) (q) "Medical director" means an unrestricted Montana licensed physician or physician assistant who is responsible professionally and legally for providing medical direction and oversight to a licensed EMT ECP and/or for the training provided in an approved program/course.

(17) and (18) remain the same, but are renumbered (r) and (s).

(t) "Offline medical direction" means general medical oversight and supervision for an emergency medical service or an ECP, including review of patient care techniques, emergency medical service procedures, and quality of care.

(49) (u) "On-line Online medical direction control" means real-time interactive medical direction, advice, or orders to EMTs from an unrestricted Montana licensed physician or physician assistant who is supervised by the medical director ECPs.

(20) (v) "Statewide protocols" means a the written, standardized manner of administering patient care statewide, approved by the board.

AUTH: 37-3-203, 50-6-203, MCA

IMP: 50-6-203, MCA

24.156.2705 UNPROFESSIONAL CONDUCT (1) and (a) remain the same.

(b) conduct likely to deceive, defraud, or harm the public including, but not limited to, practicing while subject to a physical or mental condition which renders the licensee unable to safely engage in activities required of a licensee under this subchapter;

(c) acting in such a manner as to present a danger to public health or safety, or to any patient including, but not limited to, incompetence, negligence, or malpractice;

(d) through (h) remain the same.

(i) failure to practice within the scope of practice of the EMT ECP level and endorsements;

(j) remains the same.

(k) ~~failing to maintain continuous NREMT registration while licensed as an EMT~~ complete the required continuing education requirements established by the board when identified and while licensed as an ECP in the state of Montana;

(l) through (p) remain the same.

(q) filing a complaint with, or providing information to, the board, which the licensee knows, or ought to know, is false or misleading. This provision does not apply to any filing of complaint or providing information to the board when done in good faith under 37-1-308, MCA;

(r) and (s) remain the same.

(t) failing to exercise technical competence in carrying out EMT ECP care;

(u) through (w) remain the same.

(x) failing, as a clinical preceptor or lead instructor to supervise, manage, or train students practicing under the licensee's supervision, according to:

(i) through (y) remain the same.

(z) practicing as an EMT ECP at any level without a current, active Montana license at that level;

(aa) failing to comply with any agreement the licensee has entered into with a program established by the board under 37-3-203, MCA; ~~and~~

(ab) any other act, whether specifically enumerated or not that in fact constitutes unprofessional conduct; and

(ac) failing to report to the board the unprofessional conduct of other licensed ECPs.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: The board is striking the NREMT registration from (1)(k) and replacing it with continuing education (CE) requirement. Currently, the NREMT registration is the only CE required of EMTs. In the future, should the board no longer rely on NREMT, this amendment will allow the board to design its own CE requirements.

The board is adding the failure to report other ECP misconduct as unprofessional conduct at (1)(ac) for consistency, as this reporting is already required of all other board licensees.

24.156.2711 EMT- ECP LICENSURE QUALIFICATIONS (1) The board shall license an applicant as an EMT ECP at the appropriate level, if the applicant:

(a) ~~successfully completes a board approved EMT~~ successfully completes a board-approved ECP course of instruction;

(b) ~~either possesses a current NREMT registration for the appropriate level of licensure or higher, except for EMT-Fs who have maintained continuous licensure prior to January 1, 2004 equal to or higher than the level applying for, or successfully completes a written and practical exam approved by the board;~~

(c) through (e) remain the same.

AUTH: 37-3-203, 50-6-203, MCA

IMP: 50-6-203, MCA

24.156.2713 EMT ECP LICENSE APPLICATION (1) An applicant for an EMT ECP license, at any level, shall submit an application on a form prescribed by the board. The application must be complete and accompanied by the appropriate fees and the following documentation:

(a) applicant's verification of course completion for the appropriate level ~~and/or endorsement levels~~ for which the applicant is applying;

(b) and (c) remain the same.

(d) a current NREMT registration card equal to or greater than the level for which the applicant is applying, or the successful completion of a board-approved written and practical examination or current licensure in a state the board recognizes as equivalent; and

(e) an unopened, current, and original NPDB self-query.

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

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

~~(3)~~ (4) The applicant may voluntarily withdraw the application prior to the one-year deadline set forth in ~~(2)~~ (3) by submitting a withdrawal in writing to the board. All application fees submitted will be forfeited.

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

AUTH: 50-6-203, MCA

IMP: 37-1-104, 37-1-131, 37-3-203, 50-6-203, MCA

24.156.2715 EQUIVALENT EDUCATION (1) In order for the board to ~~recommend to the NREMT successful~~ recognize an alternative ECP course completion, the course for an individual must have been either:

(a) an EMT ECP educational program reviewed and approved by the board;
or

(b) determined to be "substantially equivalent" as defined by the board. ~~The individual requesting review of their educational program must possess a currently active EMT license or certification to practice in good standing in another state.~~

(2) For the purposes of 37-1-304, MCA, the board defines "substantially equivalent" as approved training in accordance with greater than or equivalent to the board-approved USDOT curriculum standards, including revisions and statewide protocols, policies, and procedures ~~or, in the opinion of the board, completed training, experience, and passage of an examination equivalent to current board standards~~. Work experience obtained in the profession will not be considered as the sole basis of the applicant's qualifications.

(3) The individual requesting review of their education to be considered as "substantially equivalent" shall submit an application on a form prescribed by the board.

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

AUTH: 50-6-203, MCA

IMP: 37-1-131, 37-1-304, 37-3-203, 50-6-203, MCA

REASON: The board is amending this rule to eliminate the licensure requirement as part of the educational review. The amendment will allow the board to evaluate education and, based on findings, use prior education or compare and contrast differences in state requirements to determine whether the requesting individual is eligible to be licensed in Montana as an EMT.

24.156.2717 EMT ECP LICENSE RENEWAL (1) remains the same.

(2) EMT ECP licenses are issued on a biennial renewal cycle. EMT ECP licenses must be renewed on or before the date set by ARM 24.101.413 ~~of~~ in the last year of the two-year cycle.

(3) ~~Except as provided in (4), in~~ In order to renew an EMT ECP license, the licensee must:

(a) remains the same.

(b) ~~submit current NREMT registration at the level equal to or greater than the licensed level~~ complete continuing education requirements as specified by the board; and

(c) remains the same.

~~(4) An individual licensed prior to January 1, 2004, as a first responder or first responder ambulance, and wishing to renew the license as an EMT-F, may either:~~

~~(a) become NREMT registered; or~~

~~(b) complete a 16-hour board-approved USDOT curriculum refresher course each renewal period. The licensee shall provide verification of completion to the board upon request.~~

(4) In addition to the requirements in (3), ALS licensees must also identify the medical director(s) who provides medical oversight to the ECP.

(5) and (6) remain the same.

AUTH: ~~37-1-141,~~ 50-6-203, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 50-6-203, MCA

REASON: Authority cites are amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.156.2719 EXPIRED LICENSE (1) An expired EMT ECP license may be reactivated upon completion of an expired license renewal application. To reactivate an expired license the applicant shall:

(a) and (b) remain the same.

(c) ~~submit~~ possess a current NREMT ~~certification~~ registration for the appropriate level of licensure or higher, or successfully complete a board-approved written and practical examination.

(2) remains the same.

AUTH: 37-3-203, 50-6-203, MCA

IMP: 37-1-141, 50-6-203, MCA

24.156.2731 FEES (1) The following fees must be paid in connection with EMT licensure:

- (a) EMT-F, or after December 31, 2012, an EMR application fee \$20
 - (b) EMT-B, or after December 31, 2012, an EMT application fee 30
 - (c) EMT-I, or after December 31, 2012, an AEMT application fee 40
 - (d) EMT-P, or after December 31, 2012, a paramedic application fee 60
 - (e) remains the same.
 - (f) EMT-F, or after December 31, 2012, an EMR biennial renewal fee 20
 - (g) EMT-B, or after December 31, 2012, an EMT biennial renewal fee 30
 - (h) EMT-I, or after December 31, 2012, an AEMT biennial renewal fee 40
 - (i) EMT-P, or after December 31, 2012, a paramedic biennial renewal fee 60
 - (j) program approval 50 250
 - (k) remains the same.
 - (l) education review for determination of "substantially equivalent" 25
- (2) and (3) remain the same.

AUTH: 37-1-134, ~~37-1-141~~, 50-6-203, MCA

IMP: 37-1-134, 37-1-141, 50-6-203, MCA

REASON: It is reasonably necessary to amend this rule and adjust fees for course approval and educational review to reflect actual current costs. Specifically, the program approval process at ARM 24.156.2741 will now include the requirement of an onsite visit by at least two board staff.

The board estimates the cost of conducting an onsite visit for new and renewals is \$1500, which will cover a five-year period. The fee increase from \$50 to \$250 will cover those onsite visit costs. The board estimates this increase will affect six programs, as three program approvals are requested per year, and three will renew in FY 2013, with a total revenue increase in FY 2013 of \$1200.

The new fee for education review will affect 12 individuals and result in \$300 in additional annual revenue.

Authority cites are amended to accurately reflect the statutory sources of the board's rulemaking authority.

24.156.2732 MEDICAL DIRECTION (1) ~~Effective June 30, 2009 and within six months~~ Within 30 days of taking on the responsibilities as an ~~EMT off-line~~ ECP medical director, a physician or physician assistant shall:

- (a) notify the board they are providing medical direction to ECPs on a form provided by the board; and
- (a) ~~(b) complete a board-specified~~ provide proof of completion of a board-specified medical director training program; or a board-approved exemption from the training on a form provided by the board.

~~(b) demonstrate the principals of medical direction; or
(c) receive approval from the board in the event that (1)(a) or (b) is not available in that six month period.~~

(2) A physician or physician assistant who functions as a medical director and fails to comply with the requirements of (1) may not function as a medical director.

(3) The ~~off-line~~ medical director shall be responsible for the overall medical care provided by ~~EMTs~~ the ECPs for whom the director agrees to provide medical oversight.

(4) The ~~off-line~~ medical director must assure and have access to records of all ~~EMTs~~ ECPs for whom the director provides medical oversight. These records must include, but are not limited to:

(a) the name, address, and current Montana licensure of the ~~EMT~~ ECP, including any endorsements;

(b) date when medical oversight began and at what level the ~~EMT~~ ECP is authorized to function; and

(c) any changes to limit or approve the ~~EMT's~~ ECP's ability to function at the ~~EMT's~~ ECP's current licensure level.

(5) The ~~off-line~~ medical director must develop a process to assure continued appropriate patient care. This process may include regular review of patient care reports (PCR), direct observation of care, skills demonstrations, and ongoing involvement in ~~EMT~~ ECP education. Documentation of these activities must be maintained.

(6) ~~An off-line~~ A medical director may assign duties where appropriate, but retains the responsibility for all assigned duties.

(a) The medical director may delegate local offline medical direction responsibilities to another unrestricted Montana licensed physician or physician assistant.

(7) The medical director will approve and review the offering of online medical control.

(a) Online medical control must be provided by any unrestricted Montana licensed physician or physician assistant who has been contacted for this purpose.

~~(7)~~ (8) The off-line medical director may cease medical oversight by providing written notice to the EMT ECP and the board.

(9) The board or their designee may conduct onsite visits with medical directors for technical assistance and/or to assure compliance.

AUTH: 37-3-203, 50-6-203, MCA

IMP: 50-6-203, MCA

24.156.2741 EMT ECP TRAINING PROGRAM/COURSE APPLICATION

AND APPROVAL (1) An individual, corporation, partnership, or any other organization may not initiate or conduct any initial courses for ~~EMT~~ ECP instruction without prior approval of the board or its designee.

(2) Program or course approval applications must be submitted on a form prescribed by the board with appropriate fees.

(a) The application must designate a medical director and lead instructor. An application for an ALS course or a program must also designate a medical director.

(b) Applicants applying for approval of a program must complete and submit a board-approved self-study for BLS and ALS, with the original application.

(3) Completed applications will be reviewed for compliance with board statutes, rules, board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures. The board or its designee may request such additional information or clarification of information provided in the application as it deems reasonably necessary.

(4) Program applications require a site visit as a part of the review process to validate the self-study. Course applications may include a site visit.

(a) Site reviewers will include, but not be limited to, the state training coordinator and the state medical director.

(5) Nationally accredited programs meet all the requirements for program approval, but must submit an application and fee as prescribed by the board for approval by the board or its designee.

(a) Approval shall coincide with the nationally accredited approval renewal date.

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

~~(5)~~ (7) The medical director and/or lead instructor may voluntarily withdraw the course approval or program application prior to the one-year deadline provided in ~~(4)~~, (6) by writing to the board. All fees submitted will be forfeited.

~~(6)~~ (8) After withdrawal of an application, a new program or course approval application may be submitted, including all supporting documentation and appropriate fees to begin the course approval process.

~~(7)~~ (9) The board or its designee shall approve EMT ECP training courses or a program that ~~comply~~ complies with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures.

(a) Program approvals of multiple courses offered by a single provider may be approved for ~~up to one year~~ five years without reapplication and approval.

(b) remains the same.

~~(8)~~ (10) The board shall not approve an EMT ECP training course or program which does not comply with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures.

(a) remains the same.

(b) The board may cancel approval of training courses or programs for failure to comply with any of the requirements of this subchapter, providing false information, or failure to provide the board or its designee access to the course, and/or other information necessary to assure compliance with board statutes and rules.

~~(9)~~ (11) In the event the board's designee disapproves an EMT ECP training course or program, the application will be considered by the board during the next regularly scheduled board meeting, or the lead instructor and/or medical director may request in writing an alternate regularly scheduled board meeting.

~~(10)~~ (12) A lead instructor may ~~conduct~~ coordinate required EMT ECP refresher courses without preapproval from the board. The lead instructor must maintain all course records, demonstrating that NSC had USDOT curriculum has

been utilized and student performance is documented. All course records shall be made available for auditing purposes.

(13) The board or their designee may conduct onsite visits of approved courses and programs to assure the content, quality, and accuracy of the application utilized for the course or program approval.

(14) An approved program is renewable and is renewed by the submission of a renewal application on a form prescribed by the board with appropriate fees prior to the expiration date of the approval; otherwise, a new application for program approval is required.

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

24.156.2745 EXAMINATIONS (1) All practical (psychomotor) and written (cognitive) examinations for all ~~EMT ECP~~ licensure levels and endorsements must be conducted in accordance with the policies and procedures established by the board.

(2) A medical director shall be responsible for the conduct of all ~~locally administered~~ examinations and shall assure that all board policies and procedures are followed. Medical directors may delegate duties where appropriate.

(3) ~~Practical examination materials~~ All examinations must be requested from approved by the board on forms prescribed by the board no later than 30 days prior to offering an examination. ~~Examination materials will be sent to the requestor from the board office seven days prior to the scheduled examination date. The~~ All post-examination materials shall be returned within seven working days following the examination.

(4) The board or its designee may conduct onsite visits of all exams requested and approved ~~attend and audit all exams requested and offered.~~

(5) No candidate may sit for a practical (psychomotor) or written (cognitive) examination without having demonstrated successful course completion at the level of the examination or greater.

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board determined it is reasonably necessary to amend this rule to clarify all levels of examinations, including psychomotor and cognitive. The board is adding (4) and (5) to implement onsite visits to assure compliance with existing requirements and more clearly define student eligibility.

24.156.2751 LEVELS OF ~~EMT ECP~~ LICENSURE INCLUDING ENDORSEMENTS (1) The board issues four levels of licenses for ~~EMTs~~ ECPs. Each level has endorsements that may be added to an ~~EMT ECP~~ license. Endorsements do not have to be acquired in the order listed below and may consist of one or more combinations within each ~~EMT ECP~~ level. The levels of licensure and endorsements are as follows:

(a) ~~For~~ EMT - first responder (EMT-F) licenses:

(i) through (iii) remain the same.

(b) For EMT - basic (EMT-B) licenses:

(i) through (vi) remain the same.

(c) For EMT - intermediate (EMT-I) licenses:

~~(i) EMT-I/needle decompression/surgical airway;~~

~~(ii) EMT-I/immunizations;~~

~~(iii) EMT-I/drips and pumps; and~~

~~(iv) EMT-I/12 lead transmit.~~

(d) For EMT - paramedic (EMT-P) licenses:

(i) through (iv) remain the same.

(2) On January 1, 2013, the levels of licensure will be adjusted as follows:

(a) EMT-FRs with the immobilization endorsement will be issued an ECP-EMR license.

(b) EMT-FRs with the immobilization endorsement and a monitoring endorsement will be issued an ECP-EMR license with a monitoring endorsement.

(c) EMT-FRs with an ambulance endorsement and a skill verification form prescribed by the board and on file with the board before December 31, 2012, will be issued an ECP-EMT license.

(d) EMT-Bs who have completed a skill verification form prescribed by the board and on file with the board before December 31, 2012, will be issued an ECP-EMT license.

(e) EMT-Bs who have the airway endorsement and completed a skill verification form prescribed by the board and on file with the board before December 31, 2012, will be issued an ECP-EMT license with an airway endorsement.

(f) EMT-Bs who have the medication endorsement and have completed a skill verification form prescribed by the board and on file with the board before December 31, 2012, will be issued an ECP-EMT license with a medication endorsement.

(g) EMT-Bs who have the IV and IO (intravenous infusion and intraosseous infusion) initiation endorsement and have completed a skill verification form prescribed by the board and on file with the board before December 31, 2012, will be issued an ECP-EMT license with an IV and IO (intravenous infusion and intraosseous infusion) initiation endorsement.

(h) EMT-Bs who have the IV and IO maintenance endorsement and have completed a skill verification form prescribed by the board and on file with the board before December 31, 2012, will be issued an ECP-EMT license with an IV and IO maintenance endorsement.

(i) EMT-Bs with an airway, IV/IO (initiation and maintenance), monitoring, medication endorsement, and a skill verification form prescribed by the board and on file with the board before December 31, 2012, will be issued an ECP-AEMT license with a medication endorsement.

(j) EMT-Intermediate 99s who have completed a skill verification form prescribed by the board and on file with the board before December 31, 2012, will be issued an ECP-AEMT licensure with an I-99 endorsement.

(k) EMT-Intermediate 99s who have completed the paramedic bridge program as developed by the board and on file with the board before December 31, 2012, will be issued a paramedic license.

(l) EMT-Paramedics who have completed a transition program developed by the board and on file with the board before December 31, 2012, will be issued a paramedic license.

(m) EMT-Paramedics who have a critical care endorsement prescribed by the board and on file with the board before December 31, 2012, will be issued a paramedic license with a critical care endorsement.

(3) Following January 1, 2013, the levels of licensure and endorsements allowed are as follows:

(a) For ECP – Emergency Medical Responder (EMR), licenses:

(i) EMR monitoring;

(b) For ECP – Emergency Medical Technician (EMT) licenses:

(i) medication;

(ii) IV and IO (intravenous infusion and intraosseous infusion) initiation;

(iii) IV and IO (intravenous infusion and intraosseous infusion) maintenance;

and

(iv) airway;

(c) For ECP - Advanced EMT (AEMT) licenses:

(i) AEMT medication; and

(ii) AEMT-99;

(d) For ECP - Paramedic licenses:

(i) paramedic critical care transport.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

24.156.2754 INITIAL EMT ECP COURSE REQUIREMENTS (1) All courses and courses within an approved program for ~~EMT~~ all ECP licensure levels and ~~endorsements~~ must be conducted in accordance with the policies and procedures established by the board.

(2) ~~An EMT-F course~~ or, after December 31, 2012, EMR courses shall be managed by a lead instructor. The lead instructor shall maintain overall responsibility for the quality, consistency, and management of the course. The lead instructor shall:

(a) conduct the ~~EMT-F~~ or, after December 31, 2012, EMR courses in accordance with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures;

(b) through (d) remain the same.

(3) ~~An EMT-B course~~ or, after December 31, 2012, EMT courses shall be managed by a lead instructor. The lead instructor shall maintain overall responsibility for the quality, consistency, and management of the course. The lead instructor shall:

(a) conduct the ~~EMT-B~~ or, after December 31, 2012, EMT courses in accordance with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures;

(b) through (f) remain the same.

(4) ~~An EMT-I or EMT-P course~~ Advanced EMT or paramedic courses shall be managed by a lead instructor under the supervision of a medical director. The

~~lead instructor and~~ medical director shall maintain overall responsibility for the quality, consistency, and management of the course. The medical director may delegate duties where appropriate. The lead instructor and medical director shall:

(a) ~~conduct the EMT-I and EMT-P~~ advanced EMT or paramedic courses in accordance with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures;

(b) through (d) remain the same.

(i) ~~the EMT-I~~ advanced EMT course, within 18 months from the starting date of course; and

(ii) ~~the EMT-P~~ paramedic course, within 24 months from the starting date of course.

(e) and (f) remain the same.

~~(g) provide EMT-I course clinical facilities that include but are not limited to:~~

~~(i) an emergency department with physician staffing;~~

~~(ii) intensive care beds or coronary care beds; and~~

~~(iii) an EMS operating at a level equal to or greater than the EMT-I level; and~~

~~(h)~~ (g) provide for the EMT-P paramedic course clinical facilities opportunities that include, but are not limited to:

(i) remains the same.

(ii) intensive care beds or coronary care beds;

(iii) remains the same.

(iv) pediatric beds care;

(v) remains the same.

(vi) psychiatric beds care;

(vii) through (ix) remain the same.

(x) an EMS operating at a level equal to the EMT-P paramedic level.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

24.156.2757 EMT ECP CLINICAL REQUIREMENTS (1) Clinical opportunities for students must be coordinated with the course/program course or approved program and the clinical facility. ~~There must be a written contractual agreement in place between the course/program and the clinical facility prior to the student being allowed to function in the clinical facility.~~

(2) EMT-B or, after December 31, 2012, EMT courses or approved programs must assure that the student completes a minimum of ten hours of observational time with an EMS. An alternative patient care setting may be used if an EMS is not available. During this time the student shall complete and document:

(a) and (b) remain the same.

(3) ~~EMT-I and EMT-P~~ AEMT and paramedic courses or approved programs must assure that the student completes and documents, as a minimum, the clinical contact requirements identified in the board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: The board determined it is reasonably necessary to amend this rule and ensure the location of the clinical work has been established prior to the approval of an application. Having an agreement in place at the time of approval assures the EMT student that the course or program has all the necessary components for them to meet eligibility requirements for potential licensure.

24.156.2761 PROCEDURES FOR REVISION OF BOARD-APPROVED EMT ECP CURRICULUM AND STATEWIDE PROTOCOLS (1) At the regularly scheduled board meetings a medical director may initiate a petition for revisions to the board-approved EMT ECP curriculum and/or statewide protocols, policies, and procedures.

(2) through (4)(a) remain the same.

(b) where, in the case of an individual service approval, the board finds that the public's interest in granting the revision clearly outweighs the interest of maintaining uniform board-approved USDOT curriculum, including revisions and/or statewide protocols, policies, and procedures; and

(c) where, in the opinion of the board, the revisions will provide adequate public health, safety, and welfare protection.

AUTH: 50-6-203, MCA

IMP: 50-6-203, MCA

24.156.2771 SCOPE OF PRACTICE (1) An EMT ECP licensed or endorsed at the BLS level may perform any acts allowed within the EMT's ECP's licensure or endorsement level when:

(a) operating independently within the most current version of the Montana statewide EMT protocols; or

(b) under the medical oversight from a medical director who is taking responsibility for the EMT ECP; or

(c) operating on a Montana licensed EMS with a medical director; or

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

(2) An EMT ECP licensed or endorsed at the ALS level may perform any acts allowed within the EMT's ECP's licensure level or endorsement level when:

(a) under medical oversight from a medical director who is taking responsibility for the EMT ECP;

(b) and (c) remain the same.

(3) An EMT ECP may perform beyond the level of the EMT's ECP's individual licensure when functioning as a student in an approved course and under the direct observation of a clinical preceptor. The EMT ECP must perform within the acts allowed at the level for which the EMT ECP is a student candidate.

(4) Except as provided in (3), an EMT ECP may not perform any acts that are beyond the EMT's ECP's level of licensure or endorsement.

(5) The medical director may limit the functioning scope of an ECP due to community needs and/or issues with maintaining competency. If after remediation and review of an individual ECP's performance the medical director has continuing

concerns as to the ECP's ability to perform to the ECP's scope of practice, this shall be reported to the board.

~~(5)~~ (6) An ~~EMT~~ ECP currently licensed and in good standing in another state may function during a state and/or federally managed incident under the Montana statewide protocols, policies, and procedures, but shall comply with all of the following:

(a) limit the ~~EMT's~~ ECP's practice to the duration of the state and/or federally managed incident;

(b) remains the same.

(c) practice at the basic level, even if the ~~EMT~~ ECP is licensed at a higher level in another state, unless the individual is licensed at an ~~EMT-I or EMT-P~~ ALS level, and the federally managed incident has medical control provided by a Montana licensed physician, and the physician authorizes the individual to function beyond the basic level;

(d) and (e) remain the same.

(7) The board or their designee may conduct onsite visits of state and/or federally managed incidents to assure compliance.

~~(6)~~ (8) In the event of a ~~bioterrorism attack~~ an emergency response in which chemical agents are used or suspected as being used, ~~EMTs~~ ECPs at all levels who are appropriately trained are authorized by the board to carry ~~auto-injectors~~ antidote auto-injector kits and administer them as instructed to themselves and any others. Instruction in the use of antidote kits is required in all ECP initial and refresher courses.

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

REASON: It is reasonably necessary for the protection of public safety and health to clarify that a medical director can limit a scope of practice for an EMT under certain circumstances, and that a medical director is obligated to report to the board an EMT who is not able to function within their scope of practice. The rule is also being amended to reflect an expanded use of antidote injector kits in emergency response situations and independent practice of Basic Life Support personnel.

24.156.2775 MANAGEMENT OF INFECTIOUS WASTES (1) Each ~~EMT~~ ECP licensed by the board shall store, transport off the premises, and dispose of infectious wastes, as defined in 75-10-1003, MCA, in accordance with the requirements set forth in 75-10-1005, MCA.

(2) Used sharps shall be properly packaged and labeled within the meaning of 75-10-1005, MCA, as required by the Occupational Safety and Health Administration (OSHA). ~~If OSHA has no such requirements, the EMT shall place used sharps in a heavy, leak proof, puncture-resistant container and secure the lid with reinforced strapping tape. The container shall bear the words "used medical sharps" on a distinctive label taped or securely glued on the container.~~

AUTH: 50-6-203, MCA

IMP: 37-1-131, 50-6-203, MCA

5. The proposed new rules provide as follows:

NEW RULE I ECP ENDORSEMENT APPLICATION (1) An applicant for an ECP endorsement, at any level, shall submit an application on a form prescribed by the board. The application must be complete and accompanied by the appropriate fee and the following documentation:

(a) the applicant's verification of knowledge and skills as identified on a form provided by the board for each endorsement level for which the applicant is applying.

(2) An applicant for an ECP endorsement must have an ECP license in Montana at the appropriate level.

(3) Incomplete applications will be returned. The applicant may correct any deficiencies, complete any requirements necessary, and resubmit the application to the board office. Failure to resubmit the deficient application within one year from the date of the original submission will be treated as a voluntary withdrawal of the application and all fees will be forfeited.

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

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

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

AUTH: 37-3-203, 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: It is reasonable and necessary to separate the application process for an EMT license from the EMT endorsement because the requirements differ. To ensure licensees understand the distinct requirements, the details related to the EMT endorsement application process are in this new rule, while the requirements for an EMT license application are found in ARM 24.156.2713.

NEW RULE II CONTINUING EDUCATION REQUIREMENTS (1) All levels of licensed ECPs are required to complete board-specified continuing education requirements prior to their expiration date.

(a) EMRs must complete a board-specific EMR refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(b) EMTs must complete 48 hours of continuing education topics contained within the original EMT course and a board-specific EMT refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(c) AEMTs must complete 36 hours of continuing education topics contained within the original EMT course and a board-specific AEMT refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(d) Paramedics must complete 24 hours of continuing education topics contained within the original EMT course and a board-specific paramedic refresher program, which reviews the knowledge and skills of the current curriculum, and documents continued competence.

(2) ECPs must complete a formal refresher course in which an individual or organization validates knowledge and skills. An ECP cannot build a refresher course by combining continuing education topics or offerings.

(3) All continuing educational requirements can be met by being currently registered and in good standing by the NREMT at a level equal to or greater than the level of Montana licensure.

(4) Endorsement continuing education requirements and continued competence is the responsibility of the medical director.

(5) Documentation of all continuing education and continued competence must be on board-supplied forms, retained by the ECP, and made available to the board or their designee as a result of an audit.

(6) The board or their designee may conduct onsite visits of continuing educational offerings to assure the content and accuracy of the offering.

AUTH: 37-3-203, 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board is setting forth the continuing education requirements in this new rule to reflect the option of NREMT or demonstration of skills and knowledge directly to the board prior to relicensing.

NEW RULE III POST-COURSE REQUIREMENTS (1) Approved courses and programs must provide to the board a written report within ten days of the completion of a course.

(a) Course reports must include:

(i) the final agenda that reflects the actual course offering, including dates, instructors, and topics taught;

(ii) the names of students enrolled at the start of the course and their status at the end of the course to indicate if the student passed, failed, dropped, or did not complete the course; and

(iii) the skill and clinical documentation forms for each successful student.

(b) Program reports must contain:

(i) the type of course offered;

(ii) the names of students that successfully completed the course; and

(iii) the skill and clinical documentation forms for each successful student.

(2) Programs must provide to the board a written summary report by December 31 of each year following the date the program was approved. The report shall, at a minimum, contain:

(a) a breakdown of the level and type of course(s) offered;

- (b) the numbers of students accepted into the course(s) and their status at the end of the course to indicate numbers of students who passed, failed, dropped, or did not complete the course;
 - (c) the passage and failure rates of the certification/licensure examination;
- and
- (d) a copy of the type of certificates issued to the students by the program.

AUTH: 37-3-203, 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: The board is adopting this new rule to clearly set forth the report requirements for approved programs and courses upon completion of the course or program. These reports are already part of current procedures.

NEW RULE IV OBLIGATION TO REPORT TO THE BOARD (1) As permitted in 37-1-308, MCA, an EMT licensed under this chapter shall report to the board within three months from the date of a final judgment, order, or agency action, all information related to malpractice, misconduct, criminal, or disciplinary action in which the ECP is a named party.

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

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

AUTH: 37-3-203, 50-6-203, MCA
IMP: 50-6-203, MCA

REASON: The board is adopting New Rule IV to specify the requirements for licensed EMTs to report discipline, impairment, and other information to the board. Because licensees normally report such information at renewal, and EMTs renew every two years, it is reasonable and necessary to adopt this new rule to ensure timely and consistent reporting of legal and disciplinary actions by EMTs.

NEW RULE V COMPLAINTS INVOLVING PREHOSPITAL CARE, INTERFACILITY CARE, EMERGENCY MEDICAL TECHNICIANS (ECPs), OR EMERGENCY MEDICAL SERVICE (EMS) OPERATIONS (1) If the board receives a written complaint or otherwise obtains information that an ECP licensee, ECP license applicant, or EMS may have committed a violation of the established patient care standards for prehospital and interfacility emergency medical treatment, and transportation is in violation of applicable rules and statutes, the complaint will be reviewed by the screening panel to determine whether the complaint involves an ECP only, an EMS only, or a combination of both.

(2) Complaints found to involve EMS operations only will be referred to the Department of Public Health and Human Services (DPHHS) for investigation.

(a) If DPHHS notifies the screening panel that an ECP may have violated a board rule or the practices of an ECP may be jeopardizing patient care, the screening panel will open a complaint against the ECP.

(3) Complaints found to involve an ECP will be reviewed by the board's screening panel to determine if there is reasonable cause to believe a violation was committed by following the Department of Labor and Industry's (DLI's) complaint process.

(a) The screening panel may request an investigation by DLI to determine whether there is reasonable cause to believe that the license or license applicant has committed the violation.

(b) If a complaint involves patient care by an ECP, the screening panel will provide to DPHHS:

(i) the complaint information and the screening panel's initial findings;

(ii) any potential violation of DPHHS rules;

(iii) the existing policies or practices of EMS that may be jeopardizing patient care; and

(iv) information on the resolution of the complaint, including any sanctions imposed against an ECP licensee.

(4) If both the screening panel and DPHHS find that an investigation is needed, a joint investigation may be conducted.

(5) Unlicensed practice complaints involving an ECP or complaints involving a new ECP applicant will be reviewed by the full board.

AUTH: 37-3-203, 50-6-203, MCA

IMP: 50-6-203, MCA

REASON: The board is adopting this new rule to clearly set forth the process to be followed for complaints involving pre-hospital emergency care, interfacility care, EMTs, and EMS operations and establish a consistent mechanism for the initial review and handling of these complaints. New Rule V will clarify for licensees and the general public how complaints may be handled depending on the nature of the complaint. Further, the rule explains the possible investigation and action by both the board and DPHHS. The new rule is reflective of an internal complaint process established after the passage of HB 93 in the 2009 legislative session.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Medical Examiners, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsmed@mt.gov, and must be received no later than 5:00 p.m., October 29, 2012.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at www.medicalboard.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a

discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

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

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

BOARD OF MEDICAL EXAMINERS
ANNA EARL, MD, CHAIRPERSON

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

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

Certified to the Secretary of State September 10, 2012

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.219.401, 24.219.405, and) PROPOSED AMENDMENT
24.219.409 fee schedule)

TO: All Concerned Persons

1. On October 15, 2012, at 9:00 a.m., a public hearing will be held in room B-07, 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 Social Work Examiners and Professional Counselors (board) no later than 5:00 p.m., on October 9, 2012, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdswwpc@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonably necessary to amend the fees as proposed to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with program costs. The department, in providing administrative services to the board, has determined that fees must be increased as proposed to cover appropriated expenditures. The board estimates that approximately 231 applications and 2,232 renewals will be affected by the proposed fee changes and will result in additional annual revenue of \$210,110.96. The board has not raised fees for license applications and renewals since 2003.

The board is eliminating the original license fee as a separate fee, and instead incorporating it into the \$200 application fee. Years ago, the board collected this fee at the end of the licensure process, as an accommodation to applicants. The board has concluded that it should be collected at the beginning of the licensure process, as that is where the bulk of the application work is done by staff.

The board determined it is reasonably necessary to set and collect the continuing education (CE) application fee to cover the additional staff time necessary to build CE logs, approve applications weekly, and update the web site CE list on a weekly basis. The board has not been collecting a fee for these services, and it is necessary to do so to comply with 37-1-134, MCA, and keep fees commensurate with associated costs.

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

24.219.401 FEE SCHEDULE FOR SOCIAL WORKERS

(1) Application fee	\$50 <u>200</u>
(2) Original license fee	50
(3) (2) Renewal fee (based on annual renewal)	400 <u>175</u>
(4) (3) Renewal fee (inactive to active)	400 <u>175</u>
(5) (4) Inactive license fee (based on annual renewal)	50 <u>88</u>
<u>(5) Continuing education application</u>	<u>20</u>
(6) remains the same.	

AUTH: 37-1-134, 37-22-201, MCA

IMP: 37-1-134, 37-1-141, 37-22-302, MCA

24.219.405 FEE SCHEDULE FOR PROFESSIONAL COUNSELORS

(1) Application fee	\$50 <u>200</u>
(2) Original license fee	50
(3) (2) Renewal fee (based on annual renewal)	400 <u>175</u>
(4) (3) Renewal fee (inactive to active)	400 <u>175</u>
(5) (4) Inactive license fee (based on annual renewal)	50 <u>88</u>
<u>(5) Continuing education application</u>	<u>20</u>
(6) remains the same.	

AUTH: 37-1-134, 37-22-201, MCA

IMP: 37-1-134, 37-1-141, 37-23-206, MCA

24.219.409 FEE SCHEDULE FOR MARRIAGE AND FAMILY THERAPISTS

(1) Application/ original license fee	\$100 <u>200</u>
(2) Renewal fee (based on annual renewal)	400 <u>175</u>
(3) Renewal fee (inactive to active)	400 <u>175</u>
(4) Temporary permit <u>Inactive license fee</u> <u>(based on annual renewal)</u>	50 <u>88</u>
<u>(5) Continuing education application</u>	<u>20</u>
(5) remains the same, but is renumbered (6).	

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

IMP: 37-1-134, 37-1-141, 37-37-201, MCA

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 the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswwpc@mt.gov, and must be received no later than 5:00 p.m., October 23, 2012.

6. 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.swpc.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.

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

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

9. Cyndi Breen, executive officer, has been designated to preside over and conduct this hearing.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
LINDA CRUMMETT, LCSW, PRESIDENT

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

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

Certified to the Secretary of State September 10, 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
Rule I pertaining to mandatory cross) PROPOSED ADOPTION
reporting to law enforcement of)
crimes against children)

TO: All Concerned Persons

1. On October 10, 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 of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on October 3, 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 rule as proposed to be adopted provides as follows:

NEW RULE I DEPARTMENT NOTIFICATION OF REPORTS OF CHILD ABUSE OR NEGLECT TO LAW ENFORCEMENT (1) Upon receipt of a child abuse and neglect report indicating that any of the crimes enumerated in (2) have been committed, the department must notify the appropriate local law enforcement agency in the jurisdiction where the alleged abuse or neglect occurred.

(2) Child abuse and neglect reports that indicate the following acts may have been committed are subject to the reporting requirements in (1):

(a) the death of a child as a result of child abuse or neglect;

(b) a sexual offense, as defined at 46-23-502, MCA, against a child;

(c) exposure of a child to an actual and not a simulated violent offense as defined in 46-23-502, MCA; or

(d) exposure of a child to circumstances constituting the criminal manufacture or distribution of dangerous drugs as defined at 41-3-102, MCA.

AUTH: 2-4-201, MCA

IMP: 41-3-201, 41-3-202, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing New Rule I in order to clarify the actions the Child and Family Services Division (CFSD) will take when the department receives a child abuse and/or neglect report that indicates the commission of specific criminal acts.

New Rule I requires CFSD to report allegations of certain serious crimes against children to law enforcement.

New Rule I is necessary to ensure compliance with the amendments to 41-3-201, MCA by the Montana Legislature in 2011 which required CFSD to accept reports of alleged child abuse and/or neglect, regardless of whether the alleged perpetrator of the abuse or neglect is a person responsible for the welfare of a child, as defined at 41-3-102, MCA. The clarification in New Rule I will ensure that child abuse and neglect reports that either fall outside the department's civil authority to investigate or are criminal acts are reported to the appropriate law enforcement organization for investigation.

Fiscal Impact

There is no fiscal impact.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 18, 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 telephone and mail on August 31, 2012.

/s/ Mark Prichard
Rule Reviewer

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

Certified to the Secretary of State September 10, 2012.

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

In the matter of the adoption New) NOTICE OF PUBLIC HEARING ON
Rules I through IV pertaining to) PROPOSED ADOPTION
documentation for admission to)
Montana state hospital)

TO: All Concerned Persons

1. On October 11, 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, 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 October 4, 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 DEFINITIONS (1) "Court of Competent Jurisdiction" means a court having authority over the subject matter of civil commitment for treatment of a mental disorder and personal jurisdiction over the patient. In Montana, courts of competent jurisdiction are:

(a) state district courts, for all persons found within the state except members of an Indian tribe as described in (b); and

(b) tribal courts in Montana, for a tribal member physically located within the boundaries of the tribal member's reservation of enrollment at the time of commitment.

(2) "Department" means the Department of Public Health and Human Services.

(3) "MSH" means Montana State Hospital.

(4) "Professional Person" means a professional person as defined in 53-21-102, MCA.

(5) "Superintendent" means the superintendent of Montana State Hospital.

AUTH: 53-1-603, 53-21-601, MCA

IMP: 53-1-601, 53-21-101, 53-21-601, MCA

NEW RULE II PREADMISSION DOCUMENTATION: CIVIL (1) Before taking any of the actions listed in (a) through (e), a professional person must contact MSH by calling the main MSH switchboard at (406) 693-7000 to speak to the person responsible for admissions, and provide information and records as requested by MSH, including both physical and psychiatric medical information, sufficient to evaluate the immediate treatment needs and appropriate placement of the patient and whether alternative, less restrictive and medically appropriate facilities are available. Actions triggering this requirement are:

- (a) authorizing an emergency detention at MSH under 53-21-129, MCA;
- (b) requesting a 10-day transfer to MSH under 53-21-130, MCA;
- (c) submitting an application for voluntary admission to MSH under 53-21-111, MCA and ARM 37.66.306;
- (d) requesting the county attorney to file a petition for involuntary civil commitment to MSH under Title 53, chapter 21, MCA; or
- (e) filing or requesting tribal authorities to file a petition for involuntary civil commitment to MSH under applicable tribal law.

AUTH: 53-1-603, 53-21-601, MCA

IMP: 53-1-601, 53-21-101, 53-21-601, MCA

NEW RULE III PREADMISSION DOCUMENTATION: FORENSIC

(1) Before admitting a criminal defendant committed under any provision of Title 46, chapter 14, MCA, MSH must collect information and records, including both physical and psychiatric medical information, sufficient to evaluate the immediate treatment needs of the patient, and consult with outpatient providers and criminal justice authorities to coordinate patient care during the admission process.

AUTH: 53-1-603, 53-21-601, MCA

IMP: 53-1-601, 53-21-101, 53-21-601, MCA

NEW RULE IV DOCUMENTATION OF LEGAL AUTHORITY TO ADMIT - PRELIMINARY DOCUMENTATION BY FAX (1) MSH may not admit any person for evaluation, custody, care, or treatment without having received documentation that the admission is voluntary or that other legal authority exists to admit the person.

- (2) Documentation of legal authority to admit consists of:
 - (a) for voluntarily admission, an original signed and witnessed application for voluntary admission as provided in 53-21-111, MCA, and ARM 37.66.306;
 - (b) for emergency detention to the next regular business day, an original signed statement from a professional person after evaluation of the person pursuant to 53-21-129, MCA, that the person appears to have a mental disorder and that an emergency situation exists because any person is in imminent danger of death or bodily harm from the activity of the person;
 - (c) for ten-day interinstitutional transfer, an original written request for transfer from another DPHHS institution or the Department of Corrections pursuant to 53-21-130, MCA, which has been accepted in writing by the superintendent;

(d) for court-ordered detention, a certified copy of an order from a court of competent jurisdiction that authorizes the detention of the person to receive treatment for a mental disorder on a temporary basis until a hearing is held on a petition for civil commitment;

(e) for civil commitment, a certified copy of an order from a court of competent jurisdiction that authorizes the detention of the person to receive treatment for a mental disorder; or

(f) for forensic commitment, a certified copy of an order from a court having jurisdiction of criminal proceedings, committing the person under the provisions of Title 46, chapter 14, MCA, for evaluation, custody, care, or treatment.

(3) MSH may receive preliminary documentation by fax, if:

(a) the quality is sufficient to determine that the documentation meets the requirements of this rule except for the requirement of certification of a court order;

(b) MSH is familiar with the sender, and has no reason to believe the documentation is not authentic or has been altered; and

(c) the sender confirms that the required signed or certified documentation of legal authority will be mailed or otherwise delivered so as to arrive at MSH before 4:30 p.m. on the fifth business day after the date of the fax. The address for mailed documentation is: Admissions Office, Montana State Hospital, P.O. Box 300, Warm Springs, MT 59756.

AUTH: 53-1-603, 53-21-601, MCA

IMP: 53-1-601, 53-21-101, 53-21-601, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to adopt New Rules I through IV pertaining to preadmission documentation for admission to Montana State Hospital (MSH). These new rules include a definition section and specific documentation requirements for voluntary and involuntary, civil and forensic admissions.

These proposed new rules are necessary to fulfill the purpose of Montana's program for the seriously mentally ill. Pursuant to 53-21-101, MCA, the purposes of the program are to:

(1) secure for each person who may be suffering from a mental disorder and requiring commitment the care and treatment suited to the needs of the person and to ensure that the care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is suffering from a mental disorder and requires commitment; and

(4) ensure that due process of law is accorded any person coming under the provisions of this part.

Timely medical and legal documentation enables the hospital to ensure that it can appropriately meet new patients' physical and psychiatric medical needs upon arrival, to assist with identifying less restrictive alternatives, and to assure that a voluntary patient has consented to care or that any involuntary detention or treatment has been properly authorized with due process of law. Clear guidance for needed documentation will assist community providers to complete the application for admission efficiently, without unnecessary delays.

These proposed new rules define key terms, require mental health professional persons referring a patient for civil admission to contact MSH prior to initiating admissions and provide requested documentation, require MSH staff to obtain similar documentation for forensic patients, and require that MSH have documentation of legal authority to admit a patient either voluntarily or through legal processes prior to admission.

New Rule I

Proposed New Rule I defines five key terms used in New Rules II through IV: court of competent jurisdiction, department, MSH, professional person, and superintendent. The rule recognizes that a court of competent jurisdiction may be a state district court applying state commitment statutes, but it may also be a tribal court, for a person who is a member of the tribe and found within the borders of the reservation of enrollment where state district courts have no jurisdiction.

New Rule II

Proposed New Rule II provides a uniform procedure for all professional persons to contact MSH and provide requested physical and psychiatric medical information sufficient to enable MSH to evaluate the patient's needs, before they initiate a voluntary admission, emergency detention, interinstitutional transfer, or civil involuntary commitment. Appropriate medical information is vital to any hospital's admission process and enables MSH to "provide care suited to the needs of the person" as required by 53-21-106, MCA, including the patient's immediate medical needs, upon arrival.

MSH admits over 700 patients each year. MSH patients tend to have a higher incidence of serious medical conditions than the general public. Montana has hundreds of statutorily defined "professional persons" (the term includes all licensed physicians, all licensed psychologists, all credentialed psychiatric advanced practice registered nurses, and all department-certified mental health "professional persons") who may initiate emergency admission of patients to MSH or request court commitments. The amount and timing of medical information provided to MSH for prospective patients currently varies from practitioner to practitioner. This new rule ensures that MSH will have the information it needs during the admission process to meet the needs of each admitted patient upon arrival.

In addition, state law requires that less restrictive alternatives be considered prior to placement at MSH. Because of their central function in the admission and discharge of patients to and from community-based resources, MSH and other department staff often have information about available less restrictive treatment options that individual professional persons may not have. Advance notice of patients in crisis will enable the department to provide timely information about these alternatives to professional persons and avoid transporting patients far from their home communities when appropriate facilities are available closer to home.

New Rule III

Paralleling the provisions of New Rule II, New Rule III provides that MSH must itself obtain the needed information for forensic patients, approximately one-third of all patients at MSH. Forensic patients are criminal defendants committed through Title 46, chapter 14, MCA, for evaluation or treatment related to fitness to proceed, after being found not guilty of criminal charges due to mental illness, or to serve a sentence in DPHHS custody after being found guilty, but with impaired ability to appreciate the criminality of their behavior or conform their behavior to the requirements of law due to mental illness. These admissions are not initiated by professional persons, but MSH needs the same physical and psychiatric medical information to be able to meet their needs upon arrival.

New Rule IV

Proposed New Rule IV requires that MSH document the hospital's legal authority to treat before admitting any patient. New Rule IV describes the documents necessary to establish that an admission is authorized, whether it is voluntary, on an emergency basis, a temporary statutory transfer from another institution, or the result of a civil commitment order from a court of competent jurisdiction or an order in criminal proceedings under state law. New Rule IV also permits providing preliminary documentation by fax, with formal legal documentation to follow within five days.

Fiscal Impact

There is no fiscal impact related to these proposed rules.

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 18, 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/ Paulette Kohman
Rule Reviewer

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

Certified to the Secretary of State September 10, 2012.

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

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to deer licenses)
separated from nonresident big game)
combination licenses)

TO: All Concerned Persons

1. On May 24, 2012, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-378 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 1022 of the 2012 Montana Administrative Register, Issue Number 10.

2. The commission has adopted NEW RULE I (12.3.179) as proposed.

3. The commission received one comment. The commission's response is as follows:

Comment 1: One person stated they were in full support of the proposal.

Response 1: The commission appreciates the interest and support in this rulemaking process.

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

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State September 10, 2012

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

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through III pertaining to license)
auctions and lotteries)

TO: All Concerned Persons

1. On May 24, 2012, the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-379 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1024 of the 2012 Montana Administrative Register, Issue Number 10.
2. The commission has adopted NEW RULE I (12.3.131), II (12.3.132), and III (12.3.133) as proposed.
3. No comments or testimony were received.

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

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State September 10, 2012

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF REPEAL
20.9.103, 20.9.106, 20.9.110,)
20.9.113, 20.9.115, 20.9.116,)
20.9.117, 20.9.120, 20.9.123,)
20.9.124, 20.9.128, 20.9.134,)
20.9.140 and 20.9.141 pertaining to)
youth placement committees)

TO: All Concerned Persons

1. On August 9, 2012 the Department of Corrections published MAR Notice No. 20-9-52 pertaining to the proposed repeal of the above-stated rules at page 1587 of the 2012 Montana Administrative Register, Issue Number 15.
2. The department has repealed the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Diana L. Koch
Diana L. Koch
Rule Reviewer

/s/ Mike Ferriter
Mike Ferriter
Director
Department of Corrections

Certified to the Secretary of State September 10, 2012.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the repeal of ARM)	NOTICE OF REPEAL,
36.14.102, 36.14.103, 36.14.105,)	AMENDMENT, AND
36.14.801, the amendment of ARM)	ADOPTION
36.14.101, 36.14.201, 36.14.203,)	
36.14.204, 36.14.206 through)	
36.14.208, 36.14.301, 36.14.401,)	
36.14.402, 36.14.803, and the adoption)	
of New Rule I regarding dam safety and)	
permitting)	

To: All Concerned Persons

1. On June 21, 2012, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-167 regarding a notice of public hearing on the proposed repeal, amendment, and adoption of the above-stated rules at page 1234 of the 2012 Montana Administrative Register, Issue No. 12.

2. The department has repealed ARM 36.14.102, 36.14.103, 36.14.105, and 36.14.801 as proposed.

3. The department has amended ARM 36.14.101, 36.14.203, 36.14.204, 36.14.206 through 36.14.208, 36.14.301, 36.14.401, 36.14.402, 36.14.803 as proposed.

4. The department has adopted New Rule I (36.14.209) as proposed.

5. The department has amended ARM 36.14.201 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.14.201 WHO HAS TO APPLY FOR HAZARD DETERMINATION

(1) remains as proposed.

(a) Dams already classified as high-hazard are not required to reapply for a hazard determination. ~~This requirement applies even if the department performed a hazard determination on previous construction to the dam or reservoir and found it not to be a high-hazard dam.~~

(2) remains as proposed.

(a) wastewater pond dams that are subject to regulation under the Department of Environmental Quality (DEQ) and will be constructed according to DEQ regulations;

(b) through (f) remain as proposed.

AUTH: 85-15-110, MCA

IMP: 85-15-106, MCA

6. In addition to the amendments referenced in the comments and responses below, the department has amended ARM 36.14.201(1)(a) to clarify the original intent of the amendment, which was that the owner of a dam that has already been classified as high-hazard would not need to apply for a hazard classification.

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

COMMENT 1: Several commenters expressed their support or stated they had no comment on the proposed changes.

RESPONSE 1: DNRC thanks the commenters for their input.

COMMENT 2: Commenter noted that there are older wastewater pond dams that were not constructed under current DEQ rules. It may be necessary for DNRC to complete a classification.

RESPONSE 2: DNRC agrees and ARM 36.14.201(2)(a) has been amended to clarify that dams must be *constructed* under DEQ regulations.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Fred Robinson
FRED ROBINSON
Rule Reviewer

Certified to the Secretary of September 10, 2012.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I (42.12.107), New Rule II)
(42.12.134), New Rule III (42.12.135),)
New Rule IV (42.12.136), New Rule V)
(42.12.137), New Rule VI (42.12.138),)
New Rule VII (42.12.139), New Rule)
VIII (42.12.315), and the amendment)
of ARM 42.12.101, 42.12.103,)
42.12.106, 42.12.110, 42.12.111,)
42.12.115, 42.12.122, 42.12.126,)
42.12.128, 42.12.129, 42.12.130,)
42.12.132, 42.12.133, 42.12.141,)
42.12.143, 42.12.144, 42.12.302,)
42.12.401, and 42.13.101 relating to)
liquor license application general)
regulation and premises suitability)
requirements)

NOTICE OF ADOPTION AND
AMENDMENT

TO: All Concerned Persons

1. On May 10, 2012, the department published MAR Notice Number 42-2-876, regarding the proposed adoption and amendment of the above-stated rules at page 961 of the 2012 Montana Administrative Register (MAR), Issue Number 9.

2. A public hearing was held on June 4, 2012, to consider the proposed adoption and amendment. Tony Herbert of the Montana Brewers Association, Mark Staples of the Montana Tavern Association (MTA), Neil Peterson of the Gaming Industry Association of Montana, and Ronda Wiggers of the Montana Coin Machine Operators, all appeared and testified at the hearing. The department also received written comments from three of the testifying attendees. Additionally, the department received written comments from Jorge Quintana, counsel for the Montana Secretary of State (SOS), Jaret Coles, counsel for the Montana Legislative Services Division, and a group of liquor licensees including Stuart Ellison of Woolly Bugger, Inc., Michael Kenneally of Town Pump, Inc., Mitchell Carlton of Jack Rabbit Reds Casino, David Hanson of Teasers Gentleman's Club, Dirk N. Cooper of Diamond Jim's Casinos, William J. Nooney of Diamond Jim's Casinos, Larry Davidson of Crystal Lounge, Chelcee Rogers of B&H Casino, Joe McKenney of Cart Wheel Casino and Liquor Store, Maureen Blatter of Loose Caboose Casino, Bryan Sandrock of 4J's Casino, Deryl Sandrock of Drae's Station Casino, Chris Sandrock of Sunset Casino-702 Club, and a representative of Little Nevada Casino. For the purposes of the following summary, the group of liquor licensees will be referred to as the Licensees when referencing their common comments. The oral and written comments received at or subsequent to the hearing are summarized as follows, along with the responses of the department:

COMMENT NO.1: Mr. Peterson, Mr. Kenneally, and the Licensees all commented that the language in the preamble stating a licensee may not minimize the sale of alcoholic beverages to promote other business interests or activities over the sale of alcohol is not supported in code. Mr. Peterson stated that existing statute and rule would support an exact opposite conclusion. Mr. Kenneally asked if the department thus requires on-premises alcoholic beverage licensees to maximize the sale of alcoholic beverages and consumption compared to any other product or service promotion that the licensee is allowed by law to offer, how would this work in the real world?

Mr. Peterson further commented that while the Montana Alcoholic Beverage Code (MABC) allows the department to develop and maintain a licensing system for the manufacture, distribution, and sale of alcoholic beverages in Montana, the department has no statutory or regulatory mandate to tell liquor license owners how to operate their businesses. The department should only be concerned that a licensee is promoting the legal and responsible consumption of alcoholic beverages.

Mr. Kenneally commented that on-premises licensees throughout Montana offer and promote a variety of other business interests, products, services, and activities that clearly take promotional priority or emphasis over the promotion of the sale of on-premises consumption of alcohol. Many compliant licensees, such as bowling alleys, hotels, restaurants, pool halls, golf courses, ski areas, baseball parks, etc., could now be considered to be impermissibly minimizing the sale of alcoholic beverages. In addition to the clear impracticality of this proposal it would seem to contradict the much publicized broad goal of changing Montana's alcohol culture. On-premises licensees that offer a variety of products and services in addition to the sale and consumption of alcoholic beverages are much more likely to promote alcohol temperance, and thus aid in the responsible sale and service of alcoholic beverages.

Mr. Peterson commented that while the department cites the concept of public convenience and necessity as one basis for their conclusion; this only comes into play during the licensing process and only if a protest is received from the public. As per 16-4-203, MCA, if there is no protest to the issuance of a license then public convenience and necessity is met and no further determination is allowed by the department. He stated that the department should reject their position and modify any of the new rules or amendments to existing rules they have made using this erroneous finding.

Mr. Peterson made reference to the language in ARM 42.13.108, which defines how the department will determine whether or not a licensee's business to sell alcoholic beverages operates as a going concern, and commented that all that is required under this rule is that the licensee must be open twenty hours a week, maintain ten cases of product for sale, and sell \$50 of alcoholic beverages a week. He further commented that the standard for a going concern does not seem to support the department's position.

Mr. Peterson commented that singling out gambling in the example is troubling. Current rule, ARM 42.12.122, states there are several businesses that are directly tied to the sale of alcoholic beverages. Surely a bowling alley primarily promotes bowling, a restaurant primarily promotes the sale of food, and a hotel

primarily promotes lodging, and it is nonsensical that the department's position could be or would be applied to these types of businesses. He also commented that gambling was further tied to the sale of alcoholic beverages by the legislature in 23-5-119, MCA, which requires that a holder of a gambling license must also possess an on-premises license to sell alcoholic beverages.

RESPONSE NO. 1: The department appreciates these comments. After prohibition, the state of Montana determined to permit the sale and consumption of alcohol, subject to restrictions, including that alcohol sales be made only by persons licensed by the state. In 1947, the Legislature further limited on-premises licenses, with a quota based on population within each defined quota area (16-4-105, 16-4-201, and 16-4-420, MCA).

The licensing system provides a network of licensed businesses to provide alcohol to the public in a responsible manner. It is illogical to license an activity and to not have the activity occur. If licensees do not provide for alcohol to be consumed on their premises it defeats the purpose of the network, and is inconsistent with other statutory provisions, such as that requiring that a license not actually in use be lapsed and made available to another applicant (16-3-310, MCA). The numbers of licenses are limited based on the quota and the licensed activity needs to be in existence and needs to be conducted in a safe and responsible manner.

The department does not require the licensees to maximize the sale of alcoholic beverages or not promote other activities, but in fact requires the licensee to make available the activity for which they are licensed, without requiring the public to engage in another activity.

In regards to Mr. Peterson's comment about public convenience and necessity, the MABC does require that on-premises consumption alcoholic beverage licensees materially promote the public's ability to engage in the licensed activity, i.e., the on-premises consumption of alcoholic beverages (16-4-203, MCA). The fact that this is determined as a threshold requirement for licensure illustrates its importance in the MABC.

Furthermore, the primacy of the alcoholic beverage sales aspect of the licensed business is further indicated by the law, which makes an alcoholic beverages license a prerequisite for obtaining a license to engage in another activity commonly associated with bars, such as gambling. (See *In re Transfer of Ownership & Location of Mont. All-Alcoholic Bevs. Lic. No. 02-401-1287-001*, 2007 MT 192, ¶ 4, 338 Mont. 363, 168 P.3d 68).

This is not inconsistent with a culture of responsible alcohol consumption or, the promotion of temperance, as it is described in 16-1-101(3), MCA, as on-premises consumption in a licensed establishment occurs in the presence of licensees, or their employees, who are bound by law to prevent over-service.

The fact that licenses are limited by quota and must lapse if not used (in order to enable another person to be licensed up to the quota) provides strong support for the proposition that the MABC is intended to require all quota licenses to be used for the licensed activity of on-premises alcohol sales.

On-premises consumption alcoholic beverage licenses may certainly be used in conjunction with other lawful businesses. However, if a business chooses to obtain an alcoholic beverage license it must uphold its obligation to permit the public

to responsibly engage in on-premises alcohol consumption. The business cannot design or operate its premises in such a way that on-premises alcohol consumption is difficult for the public to engage in without also engaging in some other activity. To do so thwarts the intent of the quota system.

COMMENT NO. 2: Mr. Staples commented that it's ironic in this rulemaking that the department seeks to clarify, define, and emphasize its longstanding authority over alcohol and alcohol transactions in Montana, while at the same time, there are premises in Helena that openly defy that authority by operating, and even advertising, unlicensed bottle clubs.

He stated that legitimate, licensed, premises are investigated, examined, protested, inspected, audited, stung, taxed, zoned, and assessed fees in exchange for the privilege of serving alcohol in a public establishment. They must train their servers, conform their premises, check identification, not over-serve, be law-abiding, pay their taxes, and generally be in strict compliance with a vast array of governmental controls over their alcohol service.

Mr. Staples asked, relative to the bottle clubs, what their requirements are. He commented that they operate with no restrictions, scrutiny, or consequences and are a gaping tear in the fabric of the State of Montana's alcohol control system. He further commented that in Montana, a control state, if you want to escape all responsibility, regulation, investigation, scrutiny, sanctions, and consequences related to transactions involving alcohol, just move to Helena, open a bottle club, transact with patrons by requiring food purchase, or by charging a corkage fee for opening the alcohol and providing the glasses. And in our state's most tightly and comprehensively regulated business you can operate totally unfettered by even as much as a guideline.

Mr. Staples stated that the MTA has consistently been supportive of the department's authority and administration of alcohol matters. He further stated that with all sincere respect, they ask how in fairness the department can propose to tighten down even tighter via these rule proposals on law abiding, multi-rule compliant, tax-paying alcohol licensees, while in the same city where these proposals were drafted a practice flourishes that openly contradicts the very control principle upon which these proposals are premised.

Mr. Staples commented that while the department may consider this a matter for local law enforcement, 16-6-306, MCA, clearly prohibits bottle clubs. He further commented that in every other jurisdiction in Montana local authorities have cited 16-6-306, MCA, in shutting down bottle clubs when they have appeared. That Helena and Lewis and Clark County authorities do not enforce that statute should be irrelevant to the department, just as in some sting cases, whether a local prosecutor makes a deal with the noncompliant employee makes no difference to the department in pursuing their own action against the cited establishment.

Mr. Staples stated that the department may ask if they are not licensed what sanctions can be imposed. If the department determines that it is constrained by jurisdictional limits that extend only to licensees, it is in no way similarly limited in its reach, relationships with, and influence over numerous public advocacy groups who consistently rail against what they deem to be Montana's alcohol culture.

Before the department finalizes any new or clarified strictures on legitimate

licensees it should use its considerable influence to urge the aforementioned groups to in turn use their influence to bring an end to the bottle club culture in Helena, which openly mocks the control invested in the department.

RESPONSE NO. 2: The department appreciates Mr. Staples' comments. He is correct; Montana law does prohibit bottle clubs. Like Mr. Staples, the department has serious concerns about any business in the state allowing the consumption of alcohol on its premises without being legally licensed to do so. The department does use, to its best ability, its powers of persuasion to encourage abiding by the law. While Mr. Staples highlights the existence of the bottle clubs in Helena and Lewis and Clark County, the problem exists in other jurisdictions as well.

The department reaffirms that bottle clubs are unlawful under 16-6-306, MCA, and always encourages proper authorities to enforce the law. As Mr. Staples pointed out, the department is without an enforcement mechanism against unlicensed persons or businesses. Through this rulemaking process, the problem has again come to light and the department agrees that there exists a need for lawmakers to take note and deal with it in an effective way.

The department will report to the Revenue and Transportation Interim Committee that in the course of this rulemaking the issue of unlicensed bottle clubs arose again, that the issue is of interest to the public, and that it is a matter that can only be dealt with by legislation.

COMMENT NO. 3: Ms. Wiggers questioned where the authority to write the rules comes from. She further commented that there hasn't been a court decision, she doesn't know of a petition for rulemaking, and with the exception of two minor areas regarding the growlers and the liturgical wine, there hasn't been a change in the law that would require the department to go back into rulemaking. Ms. Wiggers stated that her understanding has always been that there needs to be a change or something to initiate rulemaking.

RESPONSE NO. 3: The department appreciates Ms. Wiggers' interest in the rulemaking process, and her comments. The department is authorized by law, 16-1-303, MCA, to make rules implementing and supporting the MABC, and is unaware of any legal requirement that such rulemaking must be preceded by a court ruling or statutory change. In fact, changes in practice and operation by licensees have occurred, justifying new rules.

COMMENT NO. 4: Mr. Herbert, Mr. Peterson, Ms. Wiggers, Mr. Kenneally, and the Licensees all commented on New Rule I (42.12.107). While the comments included praise for the department's efforts to provide educational materials; they further described the rule as far reaching and bad public policy that could lead to new requirements of license holders. The comments cited the department's lack of legislative or rulemaking authority to extend prohibitions on activities into educational materials, and noted that a state agency is prohibited from engrafting additional requirements on the statute which were not envisioned by the Legislature (*Bell v. Dept. of Licensing*, 182 Mont. 21 594 P.2d 331 (1979)). The comments included requests that New Rule I (42.12.107) be withdrawn.

RESPONSE NO. 4: The department appreciates the comments from Mr. Herbert, Mr. Peterson, Ms. Wiggers, Mr. Kenneally, and the Licensees. The proposed rules provide licensees with educational material as resources relative to what is allowed, or disallowed, by law and rules. The law guides the licensees and the rule provides advice on the law. Failure to heed the advice in the rule will not constitute a separate violation of the law or other rules.

The educational materials are intended to be a helpful summary to licensees of what might otherwise be complex provisions of laws and rules. Further, the rule prompts communication between licensees and the department where there may be confusion as to whether the law permits certain activities a licensee desires to undertake. Better information and communication serve both the public interest and licensee interests. Accordingly, the department declines to withdraw the rule.

The department is amending the rule to include language to make it clear that the rule is advisory only and does not create any requirements beyond those contained in law or other rules supporting the law.

COMMENT NO. 5: Mr. Peterson commented, with regard to New Rule II (42.12.134), that the department states in the notice it is its goal to make the rules clearly understandable and thoroughly complete. In order to accomplish this goal, he suggests the department add language in (1)(a) that includes other businesses directly related to the sale of alcoholic beverages, such as a hotel, bowling alley, and gambling casino, as is found in existing rules. To include a restaurant as the only example provides incomplete advice to a licensee.

RESPONSE NO. 5: The department agrees with Mr. Peterson's comments on New Rule II (42.12.134). Although these other types of business are already included in ARM 42.12.122(3)(a), which the new rule references; the department's goal is indeed to make the rules clearly understandable and thoroughly complete. Therefore, the department is amending New Rule II (42.12.134) to strike the proposed language in (a). Because (1) directly refers to the provisions in ARM 42.12.122, which already includes other businesses directly related to the sale of alcoholic beverages, such as a bowling alley, hotel, or gambling casino for all on-premises consumption licenses, it was determined that the language in (a) could be omitted altogether, to avoid any potential confusion.

COMMENT NO. 6: Mr. Peterson commented, with regard to New Rule II (42.12.134), that it introduces a new requirement that an all-beverages licensee must sell beer, wine, and distilled spirits by the drink. He further commented that while the statute says the business has a license to sell a type of product it does not mandate that the business must sell all of the product types they are licensed to sell. The department is introducing a new concept not ever envisioned in statute and it would be contrary to the holding of *Bell*, as mentioned in the comments on New Rule I (42.12.107). Mr. Peterson stated that the department should not be involved in determining how a licensee operates its business other than to ensure the responsible sales and service of alcoholic beverages.

The Licensees also commented that they are opposed to any new rules or

amendments to existing rules being made that are not supported by either new legislation or a court ruling which would mandate a change, and that they are opposed to New Rule II (42.12.134).

RESPONSE NO. 6: The department appreciates the comments from Mr. Peterson and understands his concerns with regard to New Rule II (42.12.134). Current provisions, ARM 42.12.122(2)(b)(ii), state the licensed premises must have a bar preparation area and sufficient seating to encourage patrons to remain on the premises and consume the alcoholic beverages sold by the drink. The all-beverages licensee is licensed for beer, wine, and distilled spirits.

Public convenience and necessity pertains to the ability of the public to engage in the on-premises consumption of alcoholic beverages by the drink in a licensed public setting. The licensed activity for such licenses is the on-premises consumption of alcoholic beverages by the drink. As noted in Response No. 1, the statutory purpose of such licenses is to serve the public's convenience and necessity to engage in the licensed activity.

As such, the law requires that licensees must make available to the public the types of alcoholic beverages for which they are licensed. The notion that a licensee can limit or not engage in the activity for which it is licensed by the state is entirely inconsistent with statutory provisions that require licensees to serve the public's convenience and necessity to engage in the licensed activity (on-premises consumption of alcoholic beverages), which limit licenses by a quota system; and which require that licenses not in use be lapsed and made available to other applicants. If the licensee does not wish to offer that which they are licensed to provide, the license must become available to someone who will make the products available to the public in a safe, responsible, and legal manner, as is intended by state law and rules. Licenses may not be used to restrict markets more than is permitted under the quota system.

The department also appreciates the comments from the Licensees relative to rulemaking initiated by the department. The department is authorized by law, 16-1-303, MCA, to make rules implementing and supporting the MABC, and is unaware of any legal requirement that such rulemaking must be preceded by a court ruling or statutory change.

With regard to *Bell v. Dept. of Licensing*, 182 Mont. 21, 594 P.2d 331 (1979), Mr. Peterson asserts that the department is here impermissibly adding a requirement not envisioned by the Legislature. However, the court, speaking more recently about the holding in *Bell*, has noted that agencies may make rules to accomplish a task necessary to apply articulated requirements of the Legislature. *Bitterroot River Prot. Assn. v. Bitterroot Conservation Dist.*, 2002 MT 66, ¶¶12-14, 309 Mont. 207, 45 P.3d 24.

The Legislature has clearly established that licenses are limited by a quota system, must serve the public's convenience and necessity to engage in the licensed activity (i.e., on-premises consumption of alcoholic beverages), and furthermore that such licenses not actually put to use must lapse and become available to another applicant. By requiring that licensees make available for sale by the drink the types of alcoholic beverages that are permitted by their license, the department is "apply[ing] the legislature's articulated requirement[s]." *Bitterroot*

River Prot. Assn., ¶14.

COMMENT NO. 7: Mr. Peterson stated with regard to New Rule IV (42.12.136), that as with New Rule II (42.12.134), if the goal is to make the rules clearly understandable and thoroughly complete, the department should add other types of directly related businesses, such as a hotel, a bowling alley, a restaurant, and a gambling casino rather than just requiring that a licensee operate as a bar or tavern.

RESPONSE NO. 7: The department agrees with Mr. Peterson's comments on New Rule IV (42.12.136), which are similar to his comments on New Rule II (42.12.134). Although the other types of business are already identified in ARM 42.12.122, the department's goal is indeed to make the rules clearly understandable and thoroughly complete. Therefore, the department is amending New Rule IV (42.12.136) to remove the proposed language in (a) to avoid any potential confusion.

By striking the language, beer licensees must operate a premises as defined in ARM 42.12.122(3)(a), which already includes other businesses directly related to the sale of alcoholic beverages, such as a bowling alley, hotel, or gambling casino, for all on-premises consumption licenses.

COMMENT NO 8: Mr. Peterson commented that New Rule IV (42.12.136) requires a licensee to sell beer and/or wine by the drink, and for the same reasons as stated in his comments on New Rule II (42.12.134), this should be eliminated. He provided the example that a beer license owner may decide to add a wine amendment to sell wine, but subsequently discover that it was a poor business decision. That the department would require the licensee to sell wine until time of license renewal when the wine amendment could be removed makes no sense.

Mr. Peterson further commented that in (1)(d), the department correctly describes that a beer licensee may sell alcoholic beverages for consumption off their premises, and offered that it may be helpful to make it clear that under the provisions of 16-3-303, MCA, beer can only be sold for off-premises consumption in its original package (e.g. no beer sold in cups or glasses to be consumed off-premises).

The Licensees stated that they are opposed to any new rules or amendments to existing rules that are being made that are not supported by either new legislation or a court ruling which would mandate a change, and that they are opposed to New Rule IV (42.12.136).

RESPONSE NO. 8: The department appreciates Mr. Peterson's comments on New Rule IV (42.12.136). Similar to the department's response to his comments on New Rule II (42.12.134), the licensee with a beer license and a wine amendment is licensed to sell beer and wine to the public. As previously stated, public convenience and necessity pertains to the ability of the public to engage in the on-premises consumption of alcoholic beverages by the drink in a licensed public setting. As such, the MABC requires that licensees have a responsibility to make available to the public the types of alcoholic beverages for which they are licensed.

While the department does administer licensing on an annual basis at the end of each fiscal year, should a licensee obtain a wine amendment and then

subsequently determine the amendment to have been a bad business decision, the licensee would have the option, at any time, to forfeit the wine amendment and request that the department issue a new license minus the wine amendment. The forfeiture, however, if made outside of the annual license renewal, would not result in a refund of any associated licensing fees already paid for that year.

The department appreciates the comments from the Licensees relative to rulemaking initiated by the department. As stated in previous responses, the department is authorized by law, 16-1-303, MCA, to make rules implementing, and supporting, the MABC.

COMMENT NO. 9: Mr. Peterson and Mr. Kenneally both commented, with regard to New Rule V (42.12.137), about the requirement in (1)(c) that the licensed off-premises area be physically separated from any business not directly related to the sale of beer and/or wine for off-premises consumption, by four permanent walls.

Mr. Peterson stated that, in current law, only grocery stores and pharmacies are considered to be acceptable businesses for the off-premises sales of alcoholic beverages. The requirement for separation from businesses not directly connected to the sale of alcoholic beverages is found only in existing rules for on-premises licenses. He stated that to carry this requirement to off-premises licenses could cause significant problems for existing off-premises licensees and that the rule is unnecessary and should be eliminated.

Mr. Peterson also asked, by way of example, if the department is now saying that Walmart needs to separate its grocery and pharmacy businesses from all its other businesses such as hardware, lawn and garden, and home furnishings.

Mr. Kenneally commented that if it is the intent of the department to separate the sale of alcoholic beverages from other businesses not directly related to sales for off-premises alcoholic beverage consumption, it will have a significant and destructive impact on thousands of Montana businesses offering off-premises alcoholic beverage sales. He further commented that if the intent is only to clarify the requirements where on-premises and off-premises licensees operate in the same building, some clarification by the department of that intent is essential.

The Licensees stated that they are opposed to any new rules or amendments to existing rules that are being made that are not supported by either new legislation or a court ruling which would mandate a change, and that they are opposed to New Rule V (42.12.137).

RESPONSE NO. 9: The department appreciates these comments, agrees with Mr. Peterson and Mr. Kenneally, and will amend the rule to add the clarity it is lacking. The intent of the rule is to clarify the requirements when a separate off-premises business, and an on-premises business or a separate business under separate ownership, are located within the same building. It is not a requirement on a business, such as a grocery store or a pharmacy, to wall off certain products. To help address the concerns and add clarity, the department is amending New Rule V (42.12.137) to make it clear that the limit applies only to separate businesses, which are under separate ownership, by permanent walls.

The department appreciates the comments from the Licensees relative to rulemaking initiated by the department. As previously stated, the department is

authorized by law, 16-1-303, MCA, to make rules implementing, and supporting, the MABC.

COMMENT NO. 10: Mr. Herbert commented, with regard to New Rule VII (42.12.139), that (1)(d)(iii) speaks to limitations on self-service vending machines, self-service reach-in coolers, self-service open shelving, or self-service devices for brewers, while ARM 42.12.122(3)(f) provides that retail licensee premises may include self-service open shelving or reach-in coolers for off-premises sales only if the off-premises sales area is contiguous with the on-premises sales area, but is physically separated by walls.

For consistency and clarity, he recommends that the provisions in 42.12.122(3)(f) should also be provided for manufacturers in New Rule VII (42.12.139), in place of the current prohibition for any such devices. Mr. Herbert further commented that this would provide manufacturers with the ability to have an area, separate from their sample room, where prepackaged products could be kept for access to the public for off-premises consumption.

RESPONSE NO. 10: The department appreciates Mr. Herbert's comments and agrees with his concerns. For consistency and clarity, the department is amending the language in New Rule VII (42.12.139), to include similar language to allow manufacturers the ability to have an area, separate from their sample room, where prepackage products could be kept for access to the public for off-premises consumption.

COMMENT NO. 11: Mr. Peterson commented, with regard to ARM 42.12.101, about the requirement in (6)(g) for proof that all filings and payments related to Montana income, corporation, withholding, business, and other taxes are current for the applicant in all cases, and in the case of a transfer the seller (current licensee). Mr. Peterson asked where this requirement stops and what is meant by the term "other taxes."

Mr. Peterson and the Licensees further commented that, at the very least for a seller of a license, it should only pertain to the licensed activity. For a license applicant, it should be limited to income taxes. Both an applicant and a seller may have minority investments in businesses that they do not control but may have taxes not current, and this should not hold up an application for, or the sale of, a license. Mr. Peterson stated that the requirement for other taxes is overly broad, not specific enough, and should be eliminated.

RESPONSE NO. 11: The department believes Mr. Peterson's and the Licensees' comments and concerns regarding tax filing and payments are not applicable. The department understands there are some unique circumstances and will work with the applicants and licensees, but unless the applicants and licensees are personally liable for the tax, the rule is not operative; and if they are personally liable for unpaid taxes, they are not fit (statutorily) to be a licensee. The law, 16-4-401, MCA, (and ARM 42.13.101) does require both current licensees, and applicants, to be in compliance with all applicable laws and regulations. This includes tax laws and rules. The term "other taxes" refers to taxes that are identified

in Title 15, MCA.

COMMENT NO 12: Mr. Quintana, in reference to the inclusion of (6)(h) and (7)(h) in ARM 42.12.101, requiring "proof of assumed business name, if applicable" in the application for license, stated that the SOS does not object to this language, but pointed out that none of the implementation statutes cited require an applicant to have an assumed business name (ABN).

Mr. Quintana further commented that part of the confusion may arise from the application forms implying that an ABN is mandatory, and asks that the department modify its current liquor licensing application forms to clarify that an ABN may be provided, if applicable.

Mr. Quintana also commented, with regard to ARM 42.12.103, that although 16-4-401, MCA, was amended in 2007 to include general partnerships, limited partnerships, limited liability partnerships, and limited liability companies in addition to corporations, these added entities do not need to meet the same requirements for licensing as do corporations. In each case, a general partnership, a limited partnership, a limited liability partnership, or a limited liability company need only meet the requirements of an individual applicant as set forth in 16-4-401(2)(a), MCA. Corporate applicants can show they are authorized to do business in Montana by providing their articles of incorporation, a certificate of existence, or a certificate of fact. Other entities do not have this requirement.

Mr. Quintana further commented that requiring entities other than corporations to provide articles of incorporation or organization or proof that they are authorized to do business in Montana is contrary to the requirements of 16-4-401, MCA, and should be clarified in the rule language.

Mr. Quintana stated that the SOS also notes that some of the department's current liquor licensing application forms require limited partnerships, limited liability partnerships, and limited liability companies to provide their organization documents as filed with the SOS, which goes beyond the statutory licensing criteria as set forth in 16-4-401, MCA.

Mr. Quintana commented, with regard to ARM 42.12.141, that requiring entities other than corporations to be authorized to do business in Montana prior to making application for an alcoholic beverages license and to provide a copy of a certificate of existence or certificate of fact is contrary to licensing requirements of 16-4-401, MCA. A general partnership, a limited partnership, a limited liability partnership, or a limited liability company need only meet the requirements of an individual applicant, which does not include being authorized to do business in Montana. Only corporate applicants are required to be authorized to do business in Montana. Extending these licensure requirements to business entities other than corporations exceeds the statutory authority of the liquor licensing statute.

Mr. Quintana stated he hopes the SOS's comments will succeed in causing amendment of the department's proposed rules, and changes to existing liquor licensing application forms, as the issues addressed have caused problems for liquor license applicants and the SOS in the past.

RESPONSE NO. 12: The department appreciates Mr. Quintana's comments and the opportunity to coordinate its rules and forms with the SOS's practices and

procedures.

The department will take Mr. Quintana's concerns regarding department forms into consideration and make clarifications to the relevant forms in order to avoid confusion. It is true that an ABN is not required for a business operating using the licensee's name. However, any licensee transacting business under anything other than the licensee's exact name must have properly registered its ABN prior to license approval. For purposes of applying for an ABN, the department understands the SOS to be in agreement that applying for an alcoholic beverages license constitutes transacting business under the ABN.

With regard to Mr. Quintana's comment that only corporations are required by statute to provide documentation that they are authorized to do business in Montana, whereas other entities do not have this specific requirement, the department notes that the statutory provision, 16-4-401, MCA, which is applicable to all applicants regarding the applicant demonstrating they will operate the establishment in compliance with all applicable laws of the state, would include being properly registered to do business in Montana.

After further discussions between the department and Mr. Quintana, the department believes that the SOS and the department are now in agreement as to the materials that must be included with applications. Mr. Quintana made several suggestions for revisions to ARM 42.12.103 and 42.12.141 to address his concerns. The department is largely in agreement with those suggestions and is making amendments to those rules accordingly.

COMMENT NO 13: Mr. Peterson and the Licensees commented, with regard to ARM 42.12.106, that the department's proposed new definitions would be new requirements and there has been no change in statute or a court ruling that would give the department the authority to make the changes.

Mr. Peterson further commented that he does not know what is meant by a "bar area," and if it means an actual bar, this is a new requirement in rule and he is adamantly opposed to the requirement that a premises must have an actual bar. As long as the premises are set up to maintain complete control at all times over alcoholic beverages, the requirement of a bar is unjustified and an unnecessary cost to the licensee.

He also commented that he is opposed to the department's proposed definition of the term "individual serving" as a new and unnecessary requirement. He further commented that while it is their understanding that the definition of "individual serving" will only apply to off-premises sales at an on-premises location, New Rule II (42.12.134) and New Rule IV (42.12.136) require the sale of alcohol by the drink. A drink would constitute an individual serving thereby limiting the size for on-premises consumption whether envisioned or not. Mr. Peterson stated that if the department's intent is truly to only apply to off-premises sales, language would need to be changed to ensure that intent.

Mr. Peterson also commented, with regard to the proposed definition of "patio/deck," that while having a patio/deck as part of a licensed premises is not a new concept, having a perimeter barrier is a new requirement and he is opposed to this change. He stated that defining the term "perimeter barrier" is a new concept with a new requirement for licensees and he opposes this change.

The Licensees also commented they are opposed to the definition of a patio/deck in current statute and rules, because the requirement for a perimeter barrier is both unnecessary and an unwarranted cost to the licensee.

Mr. Peterson commented about the department amending the definition of "restaurant" as it applies to an all-beverages license or a retail on-premises beer or beer and wine license (but not a restaurant beer and wine license), stating that he is not sure why the changes are being made, and that if the amendments change current practice in rules, he is opposed to the changes.

RESPONSE NO. 13: The department thanks Mr. Peterson and the Licensees for their comments on the new definitions. There is not a requirement that there be a change in statute or a court ruling in place in order for the department to have the authority to promulgate new rules and/or definitions.

The definition for "bar preparation area," means an actual bar, and this is not a new requirement. This has been included in existing rule ARM 42.12.122 (2)(b)(ii) for many years. The intent of an alcoholic beverage license is to promote the public's ability to engage in the licensed activity, which is the on-premises consumption of alcoholic beverages, and the premises must be designed to accommodate the licensed activity.

The primacy of the alcoholic beverage sales aspect of the licensed business is further indicated by the law which makes an alcoholic beverages license a prerequisite for obtaining a license to engage in another activity commonly associated with bars, such as gambling. (See *In re Transfer of Ownership & Location of Mont. All-Alcoholic Bevs. Lic. No. 02-401-1287-001*, 2007 MT 192, ¶ 4, 338 Mont. 363, 168 P.3d 68). The public has the right to consume alcoholic beverages in a responsible and legal manner without having to engage in another activity.

With regard to the definition of the term "individual serving" as a new and unnecessary requirement, adding the term helps the department achieve its goal to increase the public's and licensees' understanding of liquor licensing laws. The goal is to eliminate any potential confusion by applicants, licensees, and the public of the premises suitability requirements for each license type where alcoholic beverages may be served or sold for either on-premises consumption or off-premises consumption, and to reflect legislative changes. The department's intention is to achieve this goal by making the rules clearly understandable and thoroughly complete.

The definition of "individual serving" does only apply to off-premises sales at an on-premises location. The department does not intend to limit the size of a serving for on-premises consumption beyond existing rules and statutes prohibiting over-service. The department is amending New Rule II (42.12.134) and New Rule IV (42.12.136) to ensure this is not misunderstood.

Although a patio/deck is not a new concept as part of a licensed premises, it has not been a part of the on-premises licensing rules beyond being defined. The department has allowed patio/decks within certain requirements. The proposed definition of "patio/deck" is to add the term, outline the current requirements, and eliminate any potential confusion by applicants, licensees, and the public of the premises suitability requirements where alcoholic beverages may be served or sold

for on-premises consumption. It is necessary for perimeter barriers around decks and patios to be in place to aid licensees, law enforcement, and the public in knowing where consumption of alcohol is lawful and where it is not and to ensure licensees can maintain control over the consumption of alcoholic beverages within their premises.

Finally, the department proposed to amend the definition of "restaurant" as it applies to an all-beverages license or a retail on-premises beer or beer and wine license (but not a restaurant beer and wine license). This is because a restaurant beer and wine license establishment has different requirements. The proposed amendments do not change the definition content or practices for an all-beverages license or a retail on-premises beer or beer and wine license.

COMMENT NO. 14: Mr. Peterson, Mr. Kenneally, Mr. Herbert, and the Licensees all commented on the proposed amendments to ARM 42.12.122, regarding suitability requirements and the requirement of a bar area.

Mr. Kenneally commented that requiring a licensee to bring its licensed premises into compliance with suitability standards is a new, unwarranted requirement which will have far reaching negative consequences if enacted. He further commented that these premises, as constructed, financed, and approved by the department are, for many licensees, their major life investment and the proposed requirement that many premises be reconfigured upon sale or transfer will have negative economic consequences that far exceed any positive effect of clarifying current law.

He also commented, with regard to the definitions and ARM 42.12.122, conditions, qualification, and determination of suitability of licensed premises, that if defining a "bar preparation area" is intended to require a licensed premises to have an actual "bar," it would be in addition to the existing "bar preparation area" language which already mandates sufficient seating to encourage a patron to remain on the premises and consume the alcoholic beverages sold by the drink.

He stated that he is opposed to the new proposed amendment, as it will be financially burdensome with no countering revenue upside to Montana businesses. He further stated that if this is not the intent of the department, then clarification of the proposed amendment is requested.

Mr. Peterson stated that several of the proposed amendments are pertinent changes impacting their members. He commented that in (3)(c), the department is proposing to change existing rules by requiring 12 seats at premises exclusive of seats at gaming machines, while existing rules count seats at gaming machines for the purposes of meeting the 12-seat requirement, and (3)(a) states a location will meet the requirement as a business established for the on-premises consumption of alcoholic beverage if the business is operated as a gambling casino. He further stated that it would seem logical that if a gambling casino meets the requirements of premises designated for the on-premises consumption of alcoholic beverages, then one would count seats at gaming machines for the 12-seat requirement. He further commented that while most licensees with an on-premises license have 12 seats in addition to seats at gaming machines, their main opposition to this change is founded on the belief that it does nothing to comply with the requirements of the MABC to promote temperance, create orderly markets, or aid in the collection of

taxes and, therefore, is unnecessary.

Mr. Peterson commented that the reason for the change seems to be the department's erroneous conclusion that a licensee may not favor a business activity over the on-premises consumption of alcoholic beverages as stated in the preamble to the MAR notice. He further commented that to the extent the proposed reordering and amendment of the rule is adding new requirements or modifying existing requirements, he is opposed to it, as there have been no statutory changes or court rulings that would allow the department to amend rules that have been in existence for many years.

The Licensees commented that they are opposed to any requirement that licensed premises must have an actual bar, that this requirement is totally unnecessary, and that it does nothing to improve the control over the sale of alcoholic beverages. The only result is to increase costs for a licensee.

RESPONSE NO. 14: The department appreciates these comments regarding the suitability requirements of a bar area. The revised suitability rules are only in effect upon an alteration or a change in ownership or location in order to mitigate any costs that some licensees may face in complying with this rule.

As explained in Response No. 1, the department recognizes that on-premises consumption alcoholic beverage licenses may, of course, be used in conjunction with other lawful businesses, as noted by the commenters. However, if a business chooses to obtain an on-premises alcoholic beverage license, it must uphold its obligation to permit the public to responsibly engage in on-premises alcohol consumption. It cannot design or operate its premises in such a way that on-premises alcohol consumption is difficult for the public to engage in without also engaging in some other activity. To have seating available for customers only if they also engage in gambling, for instance, would thwart this purpose.

The department is aware of no requirement that a change in rules can only follow a change in statute or a court ruling. The department's proposed rule changes are intended to remove confusion and more accurately reflect the department's understanding of the statutes it is tasked with enforcing.

COMMENT NO. 15: Mr. Peterson, Mr. Kenneally, Mr. Herbert, and the Licensees all commented with regard to the proposed amendments to ARM 42.12.122, relative to suitability requirements and zoning.

Mr. Peterson, Mr. Herbert, and the Licensees all commented that premises currently licensed (presumably manufacturers as well) that do not meet the suitability standards are required to meet standards, which include several items including zoning, upon a transfer of ownership. Mr. Peterson stated that adding a new provision to the existing grandfather clause, requiring a licensee to bring its premises into compliance with all suitability requirements upon transfer of ownership, could prove troublesome to all licensees and noted that existing rules require a licensee to meet suitability standards only in the event of an alteration to the premises.

Mr. Herbert commented that if a zoning change has taken place but the existing business has been grandfathered in, the impact of the rule change is unclear, and stated that the rule should be clear that preexisting zoning approval for the existing business is adequate for the transfer of ownership, otherwise the rule

could render the value of any such business worthless.

Mr. Peterson commented that he has concern with extending the requirement to upon transfer of ownership pertaining to (2). Extending the requirement to upon transfer of the license could disqualify a location if a local government has enacted zoning restrictions after the license was originally issued. He further commented that he does not think it is the intent of the department to render a licensee's location worthless by making this change, and therefore opposes the addition of the language upon transfer of license in (5). Mr. Peterson stated he hopes the department will remove this language or make it clear that the requirement does not apply to zoning by local governments.

The Licensees commented that they are opposed to the change in the grandfather clause which adds a requirement that a licensee meet suitability requirements upon transfer of a license, and stated the change could have the effect of devaluing a licensee's premise that was licensed prior to a zoning change by local government. They commented that the department needs to remove this language or make it clear that meeting suitability requirements upon transfer or ownership does not apply to local government zoning restrictions.

RESPONSE NO. 15: The department appreciates these comments. The amended rule with regard to a change of ownership is not a new provision to the existing rules.

A change of ownership of a licensee requires an application, with the exception of those ownership changes arising from changes within a licensee entity such as the death of a co-owner, divorce among co-owners, or other ownership changes among existing owners of the licensee entity. When applications are processed, the department requires that any application for a change of ownership also must meet all suitability requirements, including those in ARM 42.12.122.

The department is further amending the rule to reflect the exceptions to the rule such as the death of a co-owner, divorce among co-owners, or other ownership changes among existing owners of the licensee entity.

COMMENT NO. 16: Mr. Ellison commented, with regard to the proposed amendments to ARM 42.12.122, that any time changes are made that make it more difficult to use or purchase a liquor license, it is very hard on small operations. He further commented that they currently have 147 employees in Montana working hard to provide safe and prudent sales of alcohol under current rules, and commented that the new law providing for server training as being a positive move to improve safety for all of Montana, that was strongly supported by license holders.

Mr. Ellison stated that the current rule changes are not needed and cause a potential financial burden on anyone buying or selling a license. He further stated that they are currently looking at a location and have made an offer to purchase, but if the new rules go into effect as currently written, they would have to cancel the purchase because all of the rules could not be satisfied. He commented that since the current license holder is planning on closing if the purchase cannot happen, the seven current employees may be the first to lose their jobs because of the proposed rules.

Mr. Ellison asked the department to please reconsider the rule changes as

they are an extreme burden on operators, do not provide any needed clarification for the department, or create a safer environment for sales of alcohol in Montana.

RESPONSE NO. 16: The department appreciates Mr. Ellison's comments and understands his concerns. His comments are similar to those in Comment No. 15. The department's proposal to amend current rules and adopt new rules is to increase the public's and licensees' understanding of liquor licensing laws. The intention is not to add costs and restrictions on business operations. The goal is to eliminate any potential confusion by applicants, licensees, and the public of the premises suitability requirements for each license type where alcoholic beverages may be served or sold for either on-premises consumption or off-premises consumption, and to properly reflect legislative changes. The department's intention is to achieve this goal by making the rules clearly understandable and thoroughly complete.

New rules or amendments to existing rules are never applicable retroactively. Any transaction that has an application submitted ahead of the effective date of newly adopted or amended rules would be subject only to rules already in effect at the time of the application.

COMMENT NO. 17: Mr. Peterson commented, with regard to ARM 42.12.133, that he agrees with the changes being proposed by the department with regard to concession agreements. He further commented that the only change he does not think is necessary is the concessionaire having to post a sign outside their premises so the public can easily determine that alcoholic beverages are available. Given some concessionaire's current locations, compliance with this requirement may not be possible. For example, a restaurant located in a mall may not be able to place a sign on the outside of a mall. Requiring the concessionaire to post the concession agreement similar to the requirement for a licensee to post their license is all that is needed to inform the public.

The Licensees also commented that they are opposed to the requirement that a concessionaire post a sign on the outside of a building so the public can easily determine that alcoholic beverages are available. This requirement is not necessary and in some instances may not be possible for a concessionaire to comply.

RESPONSE NO. 17: The department appreciates Mr. Peterson's and the Licensees' comments. The proposed rules require the sign to be outside the premises, not necessarily outdoors. A licensed business' sign inside a shopping mall, visible from the common area in the mall outside of the licensee's premises, would meet this requirement. The department believes the signage is necessary to inform the public about where alcoholic beverages are being sold and who the responsibly party is.

COMMENT NO. 18: Mr. Nooney provided a general comment that he is opposed to the new rules and amendments that seem to serve no purpose other than to put added costs and restrictions on business operations, that some of the proposed changes are silly, and he wonders where they came from.

RESPONSE NO. 18: The department appreciates Mr. Nooney's comments. The intention is not to add costs or place new restrictions on business operations. The department is proposing to amend current rules and adopt new rules to increase the public's and licensees' understanding of current alcoholic beverage licensing laws. The goal is to implement and support the MABC in a way that eliminates any potential confusion by applicants, licensees, and the public, regarding the premises suitability requirements for each license type where alcoholic beverages may be served or sold, for either on-premises consumption or off-premises consumption. The department's intention is to achieve this goal by making its rules clearly understandable and thoroughly complete.

COMMENT NO. 19: Mr. Coles reviewed the proposed new rules and amendments and offered suggestions relative to some of the authorization and implementing citations that were being used, or were potentially being omitted.

RESPONSE NO. 19: The department appreciates and considered the suggestions Mr. Coles provided, agreed with many of his recommendations, and is amending the relevant citations accordingly.

3. As a result of the comments received, and upon further review of the rules based on those comments, the department adopts New Rule I (42.12.107), New Rule II (42.12.134), New Rule III (42.12.135), New Rule IV (42.12.136), New Rule V (42.12.137), New Rule VI (42.12.138), New Rule VII (42.12.139), and New Rule VIII (42.2.315), and amends ARM 42.12.101, 42.12.103, 42.12.106, 42.12.122, 42.12.128, 42.12.130, 42.12.133, 42.12.141, 42.12.143, and 42.12.302 with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (42.12.107) EDUCATIONAL MATERIALS (1) The department maintains educational materials for each type of alcoholic beverage license along with the trade practices that are permitted by Montana law and rules. Montana law provides that transactions involving alcoholic beverages are illegal unless specifically permitted by law.

(2) Licensees should seek guidance from the department concerning whether actions not listed in the department materials are allowed before engaging in such transactions. Unless the department provides written guidance citing explicit authority, the licensee should treat all transactions not in the educational materials as prohibited.

(3) Failure of a licensee to follow the guidance in the educational materials will not constitute an additional violation of law or rule.

AUTH: 16-1-303, ~~46-3-101~~, MCA

IMP: 16-1-301, 16-1-302, 16-1-304, 16-3-101, 16-6-301, MCA

NEW RULE II (42.12.134) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR AN ALL-BEVERAGES LICENSE (1) In addition to the provisions stated in ARM 42.12.122, which pertain to every type of alcoholic beverage license, with regard to an all-beverages license, a party applying for either a new license, transfer

of ownership of an existing license, transfer of location of an existing license, or approval of an alteration to the premises:

~~(a) must operate at a premises recognizable as a bar or tavern with designated space and accommodation for the individual sale and consumption of beer, wine, and distilled spirits; or a restaurant (not including a coffee or beverage shop, bakery, or kiosk) with designated space and accommodations where, in consideration of payment, food is routinely furnished to the public;~~

~~(b) must offer individual sales of beer, wine, and distilled spirits by the drink; and;~~

~~(c)~~(b) may sell alcoholic beverages for off-premises consumption only in their original packages, an individual serving, or beer in refillable growlers.

AUTH: 16-1-303, MCA

IMP: 16-3-303, 16-3-310, 16-3-311, 16-4-201, 16-4-203, 16-4-402, 16-4-404, 16-4-405, MCA

NEW RULE III (42.12.135) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A RESTAURANT BEER AND WINE LICENSE (1) remains as proposed.

(2) The term restaurant, as defined in ARM 42.12.401, does not include a coffee or beverage shop, bakery, kiosk, or a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in disposable containers not reused in the same restaurant. The disposable containers provision of the preceding sentence does not apply to a restaurant beer and wine license in use at a particular location by the same licensee as of April 9, 2009.

AUTH: 16-1-303, MCA

IMP: 16-3-311, 16-4-402, 16-4-404, 16-4-405, 16-4-420, MCA

NEW RULE IV (42.12.136) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A BEER LICENSE AND A BEER LICENSE WITH WINE AMENDMENT FOR ON-PREMISES CONSUMPTION (1) In addition to the provisions stated in ARM 42.12.122, which pertain to every type of alcoholic beverage license, with regard to beer licenses for on-premises consumption, a party applying for either a new license, transfer of ownership of an existing license, transfer of location of an existing license, or approval of an alteration to the premises:

~~(a) must operate at a premises recognizable as a bar or tavern with designated space and accommodation for the individual sale and consumption of beer and/or wine;~~

~~(b) for a beer license with a wine amendment, must meet the standards for premises operated as either a restaurant or a prepared food business (not including a coffee or beverage shop, bakery, or kiosk); or operate at a premises with designated space and accommodations where, in consideration of payment, food is routinely furnished to the public;~~

~~(c)~~(b) must offer individual sales of beer and/or wine by the drink; and

~~(d)~~(c) may sell alcoholic beverages for off-premises consumption only in their

original packages, as an individual serving, or beer in refillable growlers.

AUTH: 16-1-303, MCA

IMP: 16-3-303, 16-3-310, 16-3-311, 16-4-105, 16-4-203, 16-4-402, 16-4-404, 16-4-405, MCA

NEW RULE V (42.12.137) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR AN OFF-PREMISES BEER LICENSE AND/OR WINE LICENSE (1) In

addition to the provisions stated in ARM 42.12.122, which pertain to every type of alcoholic beverage license, with regard to a license for off-premises consumption, a party applying for either a new license, transfer of ownership of an existing license, transfer of location of an existing license, or approval of an alteration to a premises must:

(a) operate at a premises recognized as a grocery store, or a pharmacy, as described in ARM 42.12.126;

(b) sell beer and/or wine for off-premises consumption only in their original packages; and

(c) be physically separated from any business ~~not directly related to the sale of beer and/or wine for off-premises consumption~~ under separate ownership from the licensed area by ~~four~~ permanent walls. This includes a separate on-premises alcohol beverage business. The walls must be floor-to-ceiling and shall not be moved without department approval of alterations to the premises pursuant to ARM 42.13.106. The premises can have inside access to each business conducted in the building through a doorway no larger than six feet wide with a door that can be closed and locked when not in use.

(2) and (3) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-4-115, 16-4-402, 16-4-405, MCA

NEW RULE VI (42.12.138) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A BEER WHOLESALER AND/OR TABLE WINE DISTRIBUTOR LICENSE AND SUBWAREHOUSES (1) remains as proposed.

AUTH: 16-1-303, MCA

IMP: 16-4-103, 16-4-106, 16-4-108, 16-4-402, 16-4-415, MCA

NEW RULE VII (42.12.139) CONDITIONS AND QUALIFICATIONS SPECIFIC FOR A MANUFACTURER OF BEER, WINE, OR DISTILLED SPIRITS LICENSE (1) In addition to the provisions stated in ARM 42.12.122, which pertain to every type of alcoholic beverage license, with regard to a license for the

manufacture of beer, wine, or distilled spirits, a party applying for either a new license, transfer of ownership or location of an existing license, or approval of an alteration to a premises, upon approval of its license by the department:

(a) must operate at a premises recognizable as a manufacturing facility of beer, wine, or distilled spirits;

(b) must be physically separated from any other business, not directly related

to a manufacturing facility located in the same building;

(c) must not allow alcoholic beverages to be provided to the customer through automatic dispensing or vending machines or self-service devices, and the licensee or employees must have direct involvement in the service of alcohol for on- or off-premises consumption; and

(d) when provided for in law, may serve sample products manufactured on the licensed premises in one sample room. The sample room ~~must~~:

(i) must be located on the licensed premises;

(ii) must restrict access by unauthorized persons to the manufacturing areas;

and

(iii) must have licensee's or employee's direct involvement in the service of alcohol for on- and off-premises consumption. No alcoholic beverages can be provided to the customer through self-service vending machines, self-service reach-in coolers, self-service open shelving, or self-service devices (except for off-premises consumption), as provided in (iv); and

(iv) may allow the licensee to sell alcoholic beverages for off-premises consumption, and the premises may include self-service open shelving or reach-in coolers for off-premises sales, only if the off-premises sales area is contiguous with the on-premises sales area, but is physically separated with walls.

AUTH: 16-1-303, MCA

IMP: 16-3-213, 16-3-214, 16-3-411, 16-4-102, 16-4-107, 16-4-311, 16-4-312, 16-4-402, MCA

NEW RULE VIII (42.12.315) SACRAMENTAL WINE LICENSE (1) through (3) remain as proposed.

(4) This type of license is ~~nontransferable~~ nontransferable and not subject to the quota system as described in 16-4-105, MCA.

(5) and (6) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-313, ~~16-4-316~~, 16-4-401, ~~16-5-501~~, MCA

42.12.101 APPLICATION FOR LICENSE (1) remains as proposed.

(2) Applications for licenses shall be in the names of all persons with an ownership interest or to have an ownership interest in the business to be operated under the license. An owner of 10 percent or more, or who will have an ownership interest of 10 percent or more in the license, in the business, or in the entity owning the license, must meet the requirements as described in 16-4-401, MCA. If no single owner's interest is 10 percent or more, then persons whose combined ownership totals, or will total, 51 percent must meet the requirements as described in 16-4-401, MCA. If a corporation is publicly traded, it needs to meet the requirements provided for publicly traded corporations in 16-4-401, MCA. The names of all such persons shall appear on the licenses. The disqualification of any one or more applicants to hold the license disqualifies all.

(3) through (13) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-3-310, 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-220, 16-4-401, 16-4-402, 16-4-414, 16-4-502, MCA

42.12.103 SUPPORTING DOCUMENTATION -- ENTITY APPLICANTS

(1) An entity applicant other than one with fewer than ten owners or whose stock or membership units are listed on a national exchange shall list:

(a) the names, dates of birth, social security or federal tax identification numbers, and resident addresses of all owners, shareholders, directors, officers, members, and partners, as applicable; and

(b) the number of shares and/or membership units owned by each person, as well as the percentage of ownership held by each person; and

~~(c) Certificate of Existence or Certificate of Fact, as applicable;~~

~~(d) Articles of Incorporation or Organization;~~

~~(e) stock certificates;~~

~~(f) stock ledger or membership units register;~~

~~(g) by-laws;~~

~~(h) organization minutes; and~~

~~(i) any other documentation required to determine licensing qualifications.~~

(2) An entity applicant whose stock is listed on a national exchange or an entity with more than 10 stockholders, members, or partners, as applicable, shall list:

(a) the names, dates of birth, social security numbers, and residence addresses of all directors and officers, and all owners of 10 percent or more of the issued stock, membership units, or partnership interest, as applicable; and

(b) the number of shares of stock, membership units, or percentage of partnership interest held by each owner of 10 percent or more of shares of stock, membership units, or partnership interest; and

~~(c) in addition, the entity applicant must supply the documents required in (1)(c) through (1)(i).~~

(3) All entity applicants must provide one of the following to verify they have registered to transact business in the state of Montana:

(a) a certificate of existence or certificate of fact, as applicable; or

(b) articles of incorporation or organization, or application filed with the secretary of state, as applicable.

(4) In addition, the entity applicant must supply the following documents as applicable:

(a) stock certificates;

(b) stock ledger or membership units register;

(c) by laws;

(d) organization minutes; and

(e) any other documentation required to determine licensing qualifications.

AUTH: 16-1-303, MCA

IMP: 16-4-203, 16-4-205, 16-4-401, MCA

42.12.106 DEFINITIONS The following definitions apply to this subchapter:

(1) through (19) remain as proposed.

(20) "Perimeter barrier" means a barrier enclosing the perimeter of the patio/deck portion of a licensed premises, which defines the boundary of the licensed premises in a way that:

(a) clearly marks for patrons, licensees, licensees' employees, investigators, local law enforcement, or other interested parties, where consumption of alcohol is allowed;

(b) impedes access to the service areas by underage persons or others who may attempt to enter the premises without the licensee's knowledge; and

(c) consists of a fence or wall at least three feet high, or an alternative barrier that accomplishes the same purposes and is approved by the department. A perimeter barrier may be with or without entrances from the parking lot, sidewalk, or other areas beyond the ~~patio or deck~~ patio/deck regardless of whether those areas beyond the licensed premises are land or water. In the case of a patio/deck which abuts a river, lake, or other body of water, the edge of the water may serve as a portion of the perimeter barrier, subject to department approval.

(21) through (30) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-1-106, 16-3-311, 16-4-105, 16-4-205, 16-4-207, 16-4-301, 16-4-401, 16-4-402, 16-4-404, 16-4-413, 16-4-420, 16-4-423, MCA

42.12.122 CONDITIONS, QUALIFICATIONS, AND DETERMINATION OF SUITABILITY OF LICENSED PREMISES (1) remains as proposed.

(2) The premises may be considered suitable for the retail sale of alcoholic beverages, distribution of alcoholic beverages, or manufacture of alcoholic beverages only if:

(a) it meets the standards of the Department of Public Health and Human Services; the Department of Labor and Industry, Building Codes Bureau; and the Montana Fire Marshal's Office in the Investigations Bureau of the Department of Justice; or their delegated representatives;

(b) the investigator can easily determine the type of alcoholic beverages business that is being conducted on the premises due to indoor and outdoor advertising, signage, and/or the general layout and atmosphere of the premises to be licensed;

(c) for retail establishments, alcoholic beverages are advertised and displayed as being available for purchase;

(d) the premises are open for business on a regular basis so as not to be considered a license on nonuse status;

(e) the layout of the premises allows for licensee- and/or employee-only control over the preparation, sale, service, and/or distribution of alcoholic beverages;

(f) the investigator can verify to the department that the dimensions shown on the floor plan accurately represent the physical layout of the premises;

(g) the applicant has demonstrated that adequate safeguards are in place to prevent the sale, delivery, or giving away of alcoholic beverages to underage and intoxicated persons;

(h) for a new license, or a transfer of location, the premises are not located where local government zoning restrictions or ordinances prohibit the sale and/or

consumption of alcohol;

(i) the premises are not located off regular police beats and can be properly policed by local authorities;

(j) the sale of alcoholic beverages does not occur through the use of a drive-up window;

(k) the premises meet the additional rules specific to each license type; and

(l) the provisions of (3) are met for on-premises licenses.

(3) A license issued for on-premises consumption of alcoholic beverages:

(a) must be operated at a premises clearly recognizable as a business established for the on-premises consumption of alcoholic beverages or other business directly related to the on-premises consumption of alcoholic beverages, such as a bowling alley, hotel, gambling casino, or restaurant (not including a coffee or beverage shop, bakery, or kiosk);

(b) must be operated at premises that are physically separated by permanent walls from any business not directly related to the on-premises consumption of alcoholic beverages. This includes a separate off-premises alcoholic beverage business operated by the on-premises licensee. The walls must be floor-to-ceiling and shall not be moved without department approval of alterations to the premises pursuant to ARM 42.13.106. The premises can have inside access to each business conducted in the building through a doorway no larger than six feet wide with a door that can be closed and locked when not in use;

(c) except for restaurant beer and wine licenses, must be used at premises that have a bar preparation area where alcohol can be purchased and consumed and sufficient seating to encourage patrons to remain on the premises and consume the alcoholic beverages sold by the drink. Sufficient seating must consist of not less than twelve seats at a bar, tables, booths, gaming areas, or any combination of the above. The twelve seats required are independent of any seats at gaming machines;

(d) may be used at premises that include a patio/deck, if it has the required perimeter barrier and is in compliance with fire regulations, except that a license used at a golf course does not require a perimeter barrier around a patio/deck because alcohol may be consumed at any place within the boundaries of the golf course;

(e) must be operated at premises where no alcoholic beverages can be provided to the customer from self-service devices, self-service vending machines, self-service reach-in coolers, or self-service open shelving (except for off-premises consumption) as provided in (f)), and where the licensee or employees have direct involvement in the service of alcohol for on- or off-premises consumption; and

(f) except for restaurant beer and wine licenses, allows the licensee to sell alcoholic beverages for off-premises consumption, and the premises may include self-service open shelving or reach-in coolers for off-premises sales only if the off-premises sales area is contiguous with the on-premises sales area, but is physically separated with walls.

(4) remains as proposed.

(5) Premises currently licensed that do not meet the suitability standards are required to meet the above standards upon seeking department approval of alterations of the existing licensed premises in accordance with 16-3-311, MCA, or

upon a transfer of change in ownership of the license, excluding ownership changes among existing owners of an entity licensee such as death of a co-owner, divorce among co-owners, or other changes among existing owners of the licensee entity.

AUTH: 16-1-303, MCA

IMP: 16-3-311, 16-4-402, 16-4-404, 16-4-405, 16-4-420, MCA

42.12.128 CATERING ENDORSEMENT (1) through (5) remain as proposed.

AUTH: ~~16-1-403~~, 16-1-303, MCA

IMP: 16-3-103, 16-4-111, 16-4-204, MCA

42.12.130 DETERMINATION OF LICENSE QUOTA AREAS (1) through (3) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, ~~16-4-409~~, 16-4-420, 16-4-501, MCA

42.12.133 CONCESSION AGREEMENTS (1) and (2) remain as proposed.

(3) The requirements of (2) regarding signage must be met for all licenses operating under a concession agreement and must be complied with for any such license to be issued or renewed for the license year beginning July 1, ~~2012~~ 2013, or thereafter.

(4) through (6) remain as proposed.

AUTH: 16-1-303, MCA

IMP: 16-3-305, 16-3-311, 16-4-401, 16-4-402, MCA

42.12.141 LICENSED ENTITIES (1) No alcoholic beverages license shall be issued to an entity unless ~~the following requirements are met:~~

~~(a) the entity has been authorized to do business in Montana prior to making application for an alcoholic beverages license;~~

~~(b) the~~

~~(2) An entity's application must be accompanied by a copy of the entity's Certificate of Existence for corporations and limited liability companies, and limited liability partnerships or a copy of the entity's Certificate of Fact for all other types of entities the following, as issued within the last six months by the Montana Secretary of State; ~~and:~~~~

~~(a) articles of incorporation or organization, or a certificate of existence for corporations and limited liability companies; or~~

~~(b) a certificate of fact or application as filed with the Secretary of State for all other types of entities.~~

~~(c) the~~

(3) The applicant must be current on all filings and payments related to Montana income, corporation, withholding, business, and other taxes.

AUTH: 16-1-303, MCA

IMP: 16-4-401, MCA

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES (1) For purposes of this rule, any ownership interest in a business ~~which that~~ operates ~~in conjunction with~~ a license issued under the Montana Alcoholic Beverage Code is considered to be an ownership interest in the license itself. Except as provided in 16-4-205, MCA, any person holding an ownership interest in an all-beverages license issued pursuant to 16-4-401, MCA, or, with the exception of (a), any member of their immediate family, as defined in ARM 42.2.304, is not qualified to own an interest in or have any affiliation with:

- (a) another all-beverages license in Montana;
- (b) a Montana beer wholesaler license;
- (c) a Montana table wine distributor license;
- (d) an alcoholic beverage manufacturer;
- (e) an importer of alcoholic beverages; or
- (f) a state agency liquor store.

(2) remains as proposed.

(3) Any person holding an ownership interest in a beer wholesaler license issued pursuant to 16-4-401, MCA, or, with the exception of (a), any member of their immediate family, is not qualified to own an interest in or have any affiliation with:

- (a) another Montana beer wholesaler license;
- (b) an alcoholic beverage manufacturer;
- (c) an importer of alcoholic beverages;
- (d) a Montana retail alcoholic beverages license; or
- (e) a state agency liquor store.

(4) Any person holding an ownership interest in a table wine distributor's license issued pursuant to 16-4-401, MCA, or, with the exception of (a), any member of their family, is not qualified to own an interest in or have any affiliation with:

- (a) another Montana table wine distributor's license;
- (b) an alcoholic beverage manufacturer;
- (c) an importer of alcoholic beverages;
- (d) a Montana retail alcoholic beverages license; or
- (e) a state agency liquor store.

(5) Any person holding an ownership interest in a Montana alcoholic beverage manufacturer pursuant to 16-4-401, MCA, or any member of their immediate family, is not qualified to own an interest in or have any affiliation with:

- (a) a Montana retail alcoholic beverage license;
- (b) a Montana beer wholesaler license;
- (c) a Montana table wine distributor license; or
- (d) a state agency liquor store.

(6) Any person holding an interest in an agency liquor store, or any member of the agent's immediate family, is not qualified to own an interest in or have any affiliation with:

- (a) a Montana retail alcoholic beverages license;
- (b) a Montana beer wholesaler license;
- (c) a Montana table wine distributor license;

- (d) an alcoholic beverage manufacturer; or
- (e) an importer of alcoholic beverages.

AUTH: 16-1-303, MCA

IMP: 16-4-205, 16-4-401, MCA

42.12.302 DEFINITIONS The following terms will be used in this subchapter:
(1) through 12 remain as proposed.

AUTH: 16-1-201, 16-1-303, MCA

IMP: 16-1-201, 16-4-201, 16-4-202, 16-4-301, MCA

4. The department amends ARM 42.12.110, 42.12.111, 42.12.115, 42.12.126, 42.12.129, 42.12.132, 42.12.144, 42.12.401, and 42.13.101 as proposed.

5. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rulemaking 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 September 10, 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 June 30, 2012. This table includes those rules adopted during the period July 1, 2012, through September 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 June 30, 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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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in August 2012 appear. Vacancies scheduled to appear from October 1, 2012, through December 31, 2012, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of September 1, 2012.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Ageing Advisory Council (Public Health and Human Services)			
Ms. Gladys Considine Missoula Qualifications (if required): public representative	Governor	reappointed	8/3/2012 7/18/2015
Ms. Mary Lou Miller Wolf Point Qualifications (if required): public representative	Governor	reappointed	8/3/2012 7/18/2015
Ms. JoLynn Yenne Bigfork Qualifications (if required): public representative	Governor	reappointed	8/3/2012 7/18/2015
Board of Banking (Administration)			
Mr. Phil G. Gaglia Billings Qualifications (if required): state bank officer of a large sized bank	Governor	Redlin	8/29/2012 7/1/2015
Mr. Jack Johnson Billings Qualifications (if required): public representative	Governor	Noennig	8/29/2012 7/1/2015
Board of Hearing Aid Dispensers (Labor and Industry)			
Mr. Alfred McLees Billings Qualifications (if required): hearing aid dispenser (no masters)	Governor	Bolenbaugh	8/22/2012 7/1/2015

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Hearing Aid Dispensers (Labor and Industry) cont.			
Ms. Rebecca Wisnoskie Helena	Governor	reappointed	8/22/2012 7/1/2015
Qualifications (if required): hearing aid dispenser (no masters)			
Board of Physical Therapy Examiners (Labor and Industry)			
Mr. Christian Appel Bozeman	Governor	reappointed	8/3/2012 7/1/2015
Qualifications (if required): physical therapist			
Ms. Dana Hughes Conrad	Governor	Lane	8/3/2012 7/1/2015
Qualifications (if required): physical therapist			
Ms. Kathy Van Hook Helena	Governor	Miller	8/3/2012 7/1/2015
Qualifications (if required): public member			
Board of Private Security (Labor and Industry)			
Sheriff Leo C. Dutton Helena	Governor	reappointed	8/1/2012 8/1/2015
Qualifications (if required): county sheriff's office representative			
Mr. Tom Mangan Helena	Governor	Swingley	8/1/2012 8/1/2015
Qualifications (if required): licensed private investigator			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Private Security (Labor and Industry) cont.			
Captain George Skuletich Butte	Governor	reappointed	8/1/2012 8/1/2015
Qualifications (if required): city police department representative			
Mr. Daniel Taylor Glasgow	Governor	reappointed	8/1/2012 8/1/2015
Qualifications (if required): contract security company representative			
Board of Veterans' Affairs (Military Affairs)			
Dr. Trena Bonde Fort Harrison	Governor	Bell	8/9/2012 8/1/2014
Qualifications (if required): representative of the Department of Military Affairs			
Ms. Joselyn Galt Helena	Governor	Waite	8/3/2012 8/1/2016
Qualifications (if required): representative of Congressman Denny Rehberg			
Mr. Johnathon Kenneway Great Falls	Governor	Monroe	8/3/2012 8/1/2016
Qualifications (if required): veteran and resident of region 5			
Mr. Bruce W. Knutson Helena	Governor	Monroe	8/3/2012 8/1/2016
Qualifications (if required): representative of Senator Jon Tester			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Veterans' Affairs (Military Affairs) cont.			
Mr. Peter Olson Culbertson	Governor	Kettner	8/3/2012 8/1/2016
Qualifications (if required): veteran and resident of region 5			
Board of Veterinary Medicine (Labor & Industry)			
Ms. Barbara Calm Kila	Governor	reappointed	8/3/2012 7/31/2017
Qualifications (if required): veterinarian			
Historical Preservation Review Board (Historical Society)			
Mr. Zane Fulbright Lewistown	Governor	Shelden	8/22/2012 10/1/2014
Qualifications (if required): recognized in the field of historic property administration			
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services)			
Ms. Diane Cashell Bozeman	Governor	reappointed	8/9/2012 6/16/2014
Qualifications (if required): experience in prevention programs and services			
Ms. Patty Stevens Ronan	Governor	reappointed	8/9/2012 6/16/2014
Qualifications (if required): experience in prevention programs and services			
Montana Wheat and Barley Committee (Agriculture)			
Mr. Buzz Mattelin Culbertson	Governor	reappointed	8/22/2012 8/20/2015
Qualifications (if required): resident of District 1 and identifies himself as an Independent			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Wheat and Barley Committee (Agriculture) cont.			
Mr. Bruce Myllymaki Stanford	Governor	reappointed	8/22/2012 8/20/2015
Qualifications (if required): resident of District 5 and identifies himself to be a Democrat			
Mr. Tom Siderius Kalispell	Governor	reappointed	8/22/2012 8/20/2015
Qualifications (if required): resident of District 6 and identifies himself to be a Democrat			
Public Defender Commission (Administration)			
Mr. Brian Gallik Bozeman	Governor	Avignone	8/3/2012 7/1/2013
Qualifications (if required): Attorney nominated by the Montana Supreme Court			
Mr. Charles Petaja Helena	Governor	reappointed	8/3/2012 7/1/2015
Qualifications (if required): Attorney nominated by the Montana Supreme Court			
Ms. Majel Russell Billings	Governor	reappointed	8/3/2012 7/1/2015
Qualifications (if required): member of an organization advocating on behalf of racial minorities			
Public Safety Officer Standards and Training Council (Justice)			
Representative Hal Harper Helena	Governor	Ore	8/27/2012 1/1/2015
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM AUGUST 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Tourism Advisory Council (Commerce)			
Ms. Cynthia Andrus Bozeman	Governor	reappointed	8/9/2012 7/1/2015
Qualifications (if required): resident of Yellowstone Country			
Ms. Beverly Harbaugh Jordan	Governor	reappointed	8/9/2012 7/1/2015
Qualifications (if required): resident of Missouri River Country			
Ms. Kim Holzer Stanford	Governor	reappointed	8/9/2012 7/1/2015
Qualifications (if required): resident of Russell Country			
Ms. Jackie Yellowtail Crow Agency	Governor	reappointed	8/9/2012 7/1/2015
Qualifications (if required): tribal government representative and resident of Southeast Montana Country			

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2012 THROUGH DECEMBER 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Barbers and Cosmetologists (Labor and Industry) Ms. Maggie Burton-Blize, Missoula Qualifications (if required): barber	Governor	10/1/2012
Ms. Angela Printz, Livingston Qualifications (if required): cosmetologist	Governor	10/1/2012
Mr. Thayne Orton, Florence Qualifications (if required): barber	Governor	10/1/2012
Board of Occupational Therapy Practice (Labor and Industry) Ms. Lynn Yocom, Anaconda Qualifications (if required): licensed occupational therapist	Governor	12/31/2012
Ms. Sue Furey, Missoula Qualifications (if required): public representative	Governor	12/31/2012
Board of Outfitters (Labor and Industry) Mr. Shawn McNeely, Bozeman Qualifications (if required): fishing outfitter	Governor	10/1/2012
Mr. Lee Kinsey, Livingston Qualifications (if required): fishing outfitter	Governor	10/1/2012
Historical Preservation Review Board (Historical Society) Mr. Timothy Light, Kalispell Qualifications (if required): archaeologist	Governor	10/1/2012

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2012 THROUGH DECEMBER 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Historical Preservation Review Board (Historical Society) cont. Ms. Lesley M. Gilmore, Gallatin Gateway Qualifications (if required): historic architect	Governor	10/1/2012
Mr. Jon Axline, Helena Qualifications (if required): architectural historian	Governor	10/1/2012
Montana Alfalfa Seed Committee (Agriculture) Mr. Tim Wetstein, Joliet Qualifications (if required): alfalfa seed grower	Governor	12/21/2012
Mr. John Wold, Laurel Qualifications (if required): alfalfa seed grower	Governor	12/21/2012
State Employee Group Benefits Advisory Council (Administration) Ms. Mary Dalton, Helena Qualifications (if required): representing executive branch agencies	Director	12/31/2012
Mr. Steve Barry, Helena Qualifications (if required): representing executive branch agencies	Director	12/31/2012
Mr. Russ Hill, Helena Qualifications (if required): ex-officio member representing the Department of Administration	Director	12/31/2012
Mr. John McEwen, Helena Qualifications (if required): representing retired state employees	Director	12/31/2012

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2012 THROUGH DECEMBER 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State Employee Group Benefits Advisory Council (Administration) cont.		
Mr. Richard Cooley, Helena Qualifications (if required): representing executive branch agencies	Director	12/31/2012
Sen. Jim Keane, Butte Qualifications (if required): representing executive branch agencies	Director	12/31/2012
Ms. Amy Sassano, Helena Qualifications (if required): representing executive branch agencies	Director	12/31/2012
Ms. Kelly DaSilva, Helena Qualifications (if required): representing legislative branch agencies	Director	12/31/2012
Mr. Quint Nyman, Helena Qualifications (if required): representing state employees and labor organization	Director	12/31/2012
Mr. Brian Ehli, Missoula Qualifications (if required): representing state employees and labor organization	Director	12/31/2012
Ms. Erin Ricci, Helena Qualifications (if required): representing state employees and labor organization	Director	12/31/2012
Ms. Jenny Kaleczyc, Helena Qualifications (if required): representing executive branch agencies	Director	12/31/2012
Statewide Independent Living Council (Public Health and Human Services)		
Ms. June Hermanson, Billings Qualifications (if required): public representative/disabilities community	Governor	12/1/2012

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2012 THROUGH DECEMBER 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Independent Living Council (Public Health and Human Services) cont. Ms. Peggy Williams, Helena Qualifications (if required): designated state unit representative	Governor	12/1/2012
Mr. Robert Bushing, Billings Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Ms. Michelle Williamson, Pablo Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Ms. Michelle Williamson, Pablo Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Mr. Gerald Hutch, Helena Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Mr. Jim Brown, Billings Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Mr. Peter Dupree, Poplar Qualifications (if required): public representative/disabilities community	Governor	12/1/2012
Trauma Care Committee (Public Health and Human Services) Dr. J. Bradley Pickhardt, Missoula Qualifications (if required): representative of the Western Region Trauma Advisory Council	Governor	11/2/2012
Dr. Freddy Bartoletti, Anaconda Qualifications (if required): representative of the Montana Medical Association	Governor	11/2/2012

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2012 THROUGH DECEMBER 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Trauma Care Committee (Public Health and Human Services) cont.		
Ms. Lauri Jackson, Great Falls Qualifications (if required): representative of the Central Region Trauma Care Advisory Committee	Governor	11/2/2012
Mr. Bradley Von Bergen, Billings Qualifications (if required): representative of the Eastern Region Trauma Advisory Council	Governor	11/2/2012
Mr. Jonathan Weisul, Missoula Qualifications (if required): representative of the Montana Hospital Association	Governor	11/2/2012
Vocational Rehabilitation Council (Public Health and Human Services)		
Mr. Dale Mahugh, Butte Qualifications (if required): business representative	Governor	10/1/2012
Ms. Char Harasymczuk, Billings Qualifications (if required): representative of the disabilities community	Governor	10/1/2012
Ms. Christina Mattlin, Clancy Qualifications (if required): representative of the disabilities community	Governor	10/1/2012
Ms. Andrea Falcon, Kalispell Qualifications (if required): business representative	Governor	10/1/2012
Mr. Quentin Schroeter, Helena Qualifications (if required): representative of the disabilities community	Governor	10/1/2012
Ms. Mona Amundson, Glasgow Qualifications (if required): business representative	Governor	10/1/2012

VACANCIES ON BOARDS AND COUNCILS -- OCTOBER 1, 2012 THROUGH DECEMBER 31, 2012

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Vocational Rehabilitation Council (Public Health and Human Services) cont. Ms. Rosalie Hollimon, Great Falls Qualifications (if required): representative of the disabilities community	Governor	10/1/2012
Water and Waste Water Operators' Advisory Council (Environmental Quality) Mr. Tony Porrazzo, Polson Qualifications (if required): water treatment plant operator	Governor	10/16/2012
Mr. Andrew Loudermilk, Kalispell Qualifications (if required): water treatment plant operator	Governor	10/16/2012