

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 19

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 ) NOTICE OF PUBLIC HEARING ON  
ARM 2.6.202, 2.6.203, and 2.6.209 ) PROPOSED AMENDMENT  
pertaining to state vehicle use )

TO: All Concerned Persons

1. On November 1, 2012, at 1:00 p.m., a public hearing will be held in Room 53 of the Mitchell Building, 125 N. Roberts St., Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration (department) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on October 25, 2012, to advise us of the nature of the accommodation that you need. Please contact Brett Dahl, Risk Management and Tort Defense Division, P.O. Box 200124, Helena, Montana 59620-0124; telephone (406) 444-3687; TDD (406) 444-1421; facsimile (406) 444-2592; or e-mail to bdahl@mt.gov.

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

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

(1) "Measurable amount of alcohol" means the alcohol concentration of the person's breath or blood is .02 or more.

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

~~(3)~~(4) "State vehicle" means a motor vehicle, ~~semitrailer~~, snowplow, or other vehicle designed for travel on public roads that is subject to motor vehicle registration, including any machinery or apparatus attached to the vehicle. The term includes the following:

(a) through (d) remain the same.

AUTH: 2-17-424, MCA

IMP: 2-9-201, 2-9-305, 2-17-424, MCA

STATEMENT OF REASONABLE NECESSITY: State employees operate and drive a variety of trailers in addition to semitrailers. The change to "State vehicle", therefore, reflects this fact. The department considered another alternative to this proposed amendment. One alternative was to list the trailers that state employees currently operate and drive. The department rejected this alternative because given that the type of trailers employees will operate and drive will change over time, the department determined it would not be a productive use of resources to regularly amend the rule.

The Statement of Reasonable Necessity for the definition of "Measurable amount of alcohol" is included with ARM 2.6.209 below.

2.6.203 AUTHORIZED DRIVERS AND USES (1) through (1)(h) remain the same.

~~(i) a nonstate employee who is an independent contractor or an employee of a temporary employment agency contracting with the state with prior approval from the agency head when a state employee is not available to operate the vehicle. The contractor must complete the RMTD's vehicle use agreement. The agreement must be signed by the agency head and presented to the motor pool or affected state agency prior to the use; and~~

~~(j)(i) a nonstate employee accompanying a state employee on official state business where the state employee becomes ill, fatigued, or is otherwise rendered physically or mentally incapable of driving and/or a compelling state interest is served by allowing the nonstate employee to drive. Prior approval is not required; and~~

(j) an inmate of a state prison who must operate a state vehicle to fulfill job duties for a position with Montana Correctional Enterprises or a state prison, and who is approved by the appropriate division as outlined in Montana State Prison/Montana Women's Prison/Montana Correctional Enterprises Procedure. If an inmate who is allowed to drive on Department of Corrections' property under this rule does not have a valid driver's license, the inmate may drive a state vehicle if:

(i) the inmate has a valid facility driving permit;

(ii) is timely paying fines, if any, associated with the inmate's loss of a driver's license; and

(iii) is working toward obtaining a valid state of Montana driver's license.

(2) remains the same.

AUTH: 2-17-424, MCA

IMP: 2-9-201, 2-9-305, 2-17-424, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes to eliminate the rule section allowing operation of state vehicles by independent contractors for several reasons. The Montana Tort Claims Act, 2-9-101, MCA, et seq. applies to claims filed against a governmental entity (the state and its political subdivisions) for money damages only because of personal injury or property damaged caused by a negligent or wrongful act or omission committed by any employee of the governmental entity while acting within the scope of employment. The term does not apply to an independent contractor under contract to a governmental entity.

The department initially allowed the use of state vehicles by independent contractors in an attempt to address the infrequent situation where a state employee was unavailable to operate the vehicle. However, experience has shown that the use has become more commonplace, exposing the state to greater potential liability. The department believes that eliminating this use of state vehicles by independent contractors will establish consistency for all state agencies and reduce the state's potential liability risks.

An alternative to the department's proposed approach is that agencies could seek approval from the Risk Management and Tort Defense Division allowing independent contractors to operate state vehicles. The department rejected this approach because the division does not have the personnel to review these requests, and this approach does not address the increased potential liability issue.

Another alternative is that each agency would have a quota of uses of a state vehicle by an independent contractor. Once the quota was reached, the agency could not allow a contractor to operate a state vehicle. While this approach would give the agencies some flexibility, it too does not address the potential liability issue.

The reason the department is proposing the rule regarding inmates driving state vehicles is to clarify the department's intent on this matter. Since around 1981, inmates have been driving and operating vehicles and equipment to perform daily assignments at the state prison. A question was raised about the ability of an inmate with a commercial driver's license and passenger endorsement to drive a bus transporting other inmates to and from the Work and Reentry Center located at the prison. The current rule does not address inmates driving vehicles, so the department believes it is important to resolve the ambiguity.

The Governor's guiding principles for the Department of Corrections include the rehabilitation of inmates. Rehabilitation is provided in part through participation in various programs, some of which require and depend on an inmate's ability to drive and operate vehicles and equipment. This activity exposes qualified inmates to productive, "real life" activities that will benefit them once released.

The inmate workers that are trained in the work programs and that may be driving vehicles or equipment are sentenced to the Montana State Prison (MSP) and are under the Department of Corrections care and custody. Inmates who work outside the fenced MSP perimeter are of a custody classification level that allows them to work in these areas. There are a limited number of inmates meeting these requirements. All inmates are thoroughly screened before moving to outside work areas and receiving authorization to drive. In this screening, MSP and Montana Correctional Enterprises (MCE) review, among other things, whether an inmate has a valid license, court ordered restrictions, and institutional behavior. Simply because an inmate has a valid license does not mean that the inmate will drive a vehicle or operate equipment. Need and work assignment guide the decision. The majority of driving occurs on MSP or MCE property. Some driving, however, occurs on the paved road between the prison facility and the railroad siding in Deer Lodge, a distance of about four miles. Any inmate driving off of prison property is supervised, and the inmate must have the appropriate current Montana driver's license.

One particular program worthy of note is the MCE inmate driver's license program that is run in cooperation with the Department of Justice (DOJ) to assist inmates with obtaining or keeping current their license. This program involves on-site training and testing by an MCE employee who DOJ has certified to administer both the written and practical driving tests. The practical test is done at the prison facility. A similar program has been implemented at the women's prison in Billings, where the practical test is done at the Billings Metra parking lot, which use is authorized through a memorandum of understanding with Yellowstone County.

Currently, 148 inmates have valid MSP/MCE permits, which may be approved for the operation of vehicles, equipment, or both. This 148 number is broken down

as follows: 40 restricted inmates who may operate motor vehicles and equipment, but do not have a valid Montana driver's license; 20 restricted inmates who may operate slow-moving equipment only; and 88 unrestricted inmates who have a current valid driver's license.

There are around 40 vehicles and 30 self-propelled pieces of equipment that are assigned for approved inmate use. These vehicles are not being operated at the same time; rather, use is dictated by need. If the qualified inmates were unable to drive and operate vehicles and equipment to perform the assigned work, the programs may have to be curtailed or, in some cases, eliminated. These programs are self-supporting, essentially paying for the costs of operation.

In July 2008, MCE identified all inmate-driven vehicles on the driver and passenger doors and the back of the vehicle with the words "inmate driver." In addition, in October 2008 MCE installed GPS tracking units on all inmate-driven vehicles. Vehicles are monitored for speed and location, and when the inmates enter or exit a designated area, they must provide notice to security and other designated staff.

In summary, allowing inmates to drive and operate vehicles and equipment is critical to the operation of various MSP and MCE inmate work programs, which are designed to provide work programming and rehabilitation. Most of the driving occurs on MSP or MCE property. Any driving off property is supervised, and the inmate must have the appropriate current Montana driver's license.

The department did consider the alternative of not allowing inmates to drive state vehicles. However, given the Department of Corrections strong support for this program and the benefits to the inmates and the state, the department rejected this alternative.

2.6.209 ALCOHOL AND DRUGS (1) No person ~~under the influence of~~ may drive a vehicle for state business who has a measurable amount of alcohol, illegal drugs, or improperly used prescription drugs in their system ~~may drive a vehicle for state business.~~

(2) No person may drive a vehicle for state business ~~under the influence of~~ who has taken any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.

(3) remains the same.

AUTH: 2-17-424, MCA

IMP: 2-9-201, 2-9-305, 2-17-424, MCA

STATEMENT OF REASONABLE NECESSITY: Montana law defines "under the influence of alcohol" to mean that as a result of taking into the body alcohol, drugs, or any combination of alcohol and drugs, a person's ability to safely operate a vehicle has been diminished. 61-8-401(3)(a), MCA. Under this definition, a person could consume alcohol, drugs, or a combination of the two, and still operate a vehicle so long as done so safely. The department, however, believes that no state employee should operate a vehicle after consuming (1) any measurable amount of alcohol or drugs or improperly used prescription drugs, or (2) properly used prescription drugs if such use affects the person's ability to safely operate a vehicle.



The department proposes using the standard of "measurable amount of alcohol" to replace the standard of "under the influence." The proposed definition of "measurable amount of alcohol" is an alcohol concentration of the person's breath or blood of .02 or more. This is the standard Montana (61-8-410(1), MCA) and many other states have adopted for purposes of "zero tolerance" of underage drinking and driving. Given this standard, the department saw no need to craft a different standard.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Brett Dahl, Risk Management and Tort Defense Division, P.O. Box 200124, Helena, Montana 59620-0124; telephone (406) 444-3687; TDD (406) 444-1421; facsimile (406) 444-2592; or e-mail to bdahl@mt.gov, and must be received no later than 5:00 p.m., November 9, 2012.

5. Mike Manion, Chief Legal Counsel, Department of Administration, has been designated to preside over and conduct this hearing.

6. The Risk Management and Tort Defense Division 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, which includes the name and mailing address or 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 request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the 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.

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

By: /s/ Sheryl Olson  
Sheryl Olson, Deputy Director  
Department of Administration

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

Certified to the Secretary of State October 1, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to nutrient trading )  
 )  
 )  
 ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION  
(WATER QUALITY)

TO: All Concerned Persons

1. On November 13, 2012, at 2:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The board 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 Elois Johnson, Paralegal, no later than 5:00 p.m., October 29, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I NUTRIENT TRADING (1) The board adopts and incorporates by reference Department Circular DEQ-13, entitled Montana's Policy for Nutrient Trading ([month and year of adoption] edition). Copies are available from the Department of Environmental Quality, Technical and Financial Assistance Bureau, P.O. Box 200901, Helena, MT 59620-0901.

(2) The department shall approve a nutrient trade that is consistent with the requirements and guidelines established in Montana's Policy for Nutrient Trading.

(3) An owner or operator of a point source discharge may submit an application for nutrient trading to the department prior to or concurrent with an application for a new or renewed MPDES permit. The application must include the information specified in Montana's Policy for Nutrient Trading and be consistent with the guidelines and requirements contained in that policy.

(4) An application to trade may be submitted for any of the following purposes:

- (a) to comply with an approved total maximum daily load (TMDL) for nutrients;
- (b) to offset a new or increased discharge of nutrients into a nutrient-impaired water;
- (c) to comply with Montana's base numeric nutrient criteria or a variance from those criteria;
- (d) to offset a new or increased discharge of nutrients into waters that are high quality for nutrients; or
- (e) to comply with the nonsignificance criteria for nutrients in ARM 17.30.715.

(5) A trade proposed pursuant to (3) must be described in the draft permit and is subject to public comment. If approved, the trade must be described in the final permit and is not effective until the final permit is issued. The final permit must contain permit conditions that ensure that the terms of the trade are enforceable.

AUTH: 75-5-201, 75-5-401, MCA

IMP: 75-5-401, MCA

REASON: The board proposes adoption of New Rule I to establish clear guidelines and requirements for evaluating nutrient trading proposals. Rather than integrating the numerous and detailed trading requirements into the rule, New Rule I incorporates by reference Department Circular DEQ-13, entitled Montana's Policy for Nutrient Trading ([month and year of adoption] edition) (Trading Policy). The Trading Policy sets out a framework for evaluating prospective nutrient trades.

Although the current water quality standards for nutrients (nitrogen and phosphorus) are narrative rather than numeric, the department sometimes establishes numeric nutrient limits on a case-by-case basis in individual permits. In addition, the board may soon propose adoption of numeric water quality standards for nutrients in Montana surface waters. These numeric limits are designed to protect the beneficial uses of such surface waters. However, because of the limitations of available treatment technology and the potential economic harm resulting from immediate enforcement of the numeric standards, point source dischargers will be granted a temporary general variance from the base numeric limits. The department may employ general variances and subsequent variances to provide interim goals and a timeframe for point sources to begin reducing nutrient loading. The long-term goal is to reduce nutrient loading by an amount necessary to achieve compliance with the nutrient limits.

Nutrient trading is a tool to assist point source dischargers to meet their interim and long-term nutrient discharge limits. A point source discharger may buy "credits," in the form of an additional allocation of nutrient discharge, from another point source discharger that is discharging to the same water body and is discharging below its nutrient limit. A point source discharger may also obtain "credits" by entering into agreements with nonpoint source dischargers to employ nutrient management practices that reduce the nonpoint source's discharge of nutrients to a common water body.

The intent of the Trading Policy is to encourage cooperation between point and nonpoint sources as a means to reduce nutrient loading into surface waters. Given that nutrient discharges from nonpoint dischargers presently are not regulated, the best potential for reduction of nutrient discharges to a water body lies in cooperation between point source and nonpoint source dischargers. The Trading Policy would allow point source to point source trading and point source to nonpoint source trading. In addition, it would provide guidance that could be used for nonpoint source to nonpoint source trading, although the department has no regulatory authority over these trades.

The Trading Policy provides flexibility, yet also establishes firm criteria that must be met by either a point or a nonpoint source before credits can be generated and sold for use in a trade. The Trading Policy establishes baseline requirements

from which trading credits will be calculated. Other requirements in the Trading Policy include a limit on the duration of credits, restrictions on the boundaries of a trade, limitations on banking credits, and a requirement that all trades will be enforced through an applicable MPDES permit. The boundary restrictions for trades are necessary to ensure that the transfer of nutrient discharge occurs between dischargers in the same watershed. The credit duration and banking restrictions will ensure that the decrease in nutrient discharge from the source selling the credit and the increase in nutrient discharge from the source purchasing the credit occur contemporaneously. Enforcement of trades through the MPDES permit system will allow the department to monitor nutrient trades and ensure compliance with this policy.

In addition, the Trading Policy provides for adjustments in the trading credits received by a discharger, referred to as trading ratios, designed to: (1) account for the reduction of the nutrient load from a nonpoint source that would have occurred naturally prior to discharge to the applicable water body (delivery ratio); (2) provide for reduction of the overall nutrient load for a water body (water quality ratio); and (3) provide a margin of error (uncertainty ratio). Together, these requirements ensure that trading will not adversely affect water quality in the short term and will improve water quality in the long term.

For the reasons given above, the board finds it reasonable and necessary to adopt the Trading Policy.

4. The proposed Montana Policy for Nutrient Trading can be viewed at <http://deq.mt.gov/wqinfo/NutrientWorkGroup/default.mcp>.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., November 14, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water

quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH  
Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,  
Chairman

Certified to the Secretary of State, October 1, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF PUBLIC HEARING ON
17.38.106 pertaining to fees and the )	PROPOSED AMENDMENT AND
adoption of New Rule I pertaining to )	ADOPTION
significant deficiency )	
)	(PUBLIC WATER AND SEWAGE
)	SYSTEM REQUIREMENTS)

TO: All Concerned Persons

1. On November 13, 2012, at 2:30 p.m., or upon the conclusion of the public hearing for MAR Notice No. 17-339, the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The board 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 Elois Johnson, Paralegal, no later than 5:00 p.m., October 29, 2012, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail [ejohnson@mt.gov](mailto:ejohnson@mt.gov).

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

17.38.106 FEES (1) remains the same.

(2) Department review will not be initiated until fees calculated under (2)(a) through (e) and (5) have been received by the department. If applicable, the final approval will not be issued until the calculated fees under (3) and (4) have been paid in full. The total fee for the review of a set of plans and specifications is the sum of the fees for the applicable parts or subparts listed in these citations.

(a) The fee schedule for designs requiring review for compliance with Department Circular DEQ-1 is set forth in Schedule I, as follows:

SCHEDULE I

Policies	
ultra violet disinfection .....	\$ 700
point-of-use/point-of-entry treatment .....	\$ 700
Section 1.0 Engineering Report .....	\$ 280
Section 3.1 Surface water	
quality and quantity .....	\$ 700
structures .....	\$ 700
Section 3.2 Ground water .....	\$ 840

Section 4.1 Clarification	
standard clarification .....	\$ 700
solid contact units.....	\$ 1,400
Section 4.2 Filtration	
rapid rate.....	\$ 1,750
pressure filtration.....	\$ 1,400
diatomaceous earth.....	\$ 1,400
slow sand .....	\$ 1,400
direct filtration.....	\$ 1,400
biologically active filtration.....	\$ 1,400
membrane filtration .....	\$ 1,400
micro and ultra filtration.....	\$ 1,400
bag and cartridge filtration.....	\$ 420
Section 4.3 Disinfection .....	\$ 700
Section 4.4 Softening.....	\$ 700
Section 4.5 Aeration	
natural draft.....	\$ 280
forced draft.....	\$ 280
spray/pressure .....	\$ 280
packed tower.....	\$ 700
Section 4.6 Iron and manganese .....	\$ 700
Section 4.7 Fluoridation .....	\$ 700
Section 4.8 Stabilization.....	\$ 420
Section 4.9 Taste and odor control .....	\$ 560
Section 4.10 Microscreening.....	\$ 280
Section 4.11 Ion exchange .....	\$ 700
Section 4.12 Adsorptive media .....	\$ 700
Chapter 5 Chemical application .....	\$ 980
Chapter 6 Pumping facilities .....	\$ 980
Section 7.1 Plant storage.....	\$ 980
Section 7.2 Hydropneumatic tanks .....	\$ 420
Section 7.3 Distribution storage.....	\$ 980
Section 7.4 Cisterns.....	\$ 420
Chapter 8 Distribution system	
per lot fee .....	\$ 70
non-standard specifications .....	\$ 420
transmission distribution (per lineal foot).....	\$ 0.25
rural distribution system (per lineal foot) .....	\$ 0.03
sliplining existing mains (per lineal foot).....	\$ 0.15
Chapter 9 Waste disposal.....	\$ 700
Appendix A	
new systems .....	\$ 280
modifications .....	\$ 140

(b) The fee schedule for designs requiring review for compliance with Department Circular DEQ-2 is set forth in Schedule II, as follows:

SCHEDULE II

Chapter 10 Engineering reports and facility plans	
engineering reports (minor) .....	\$ 280
comprehensive facility plan (major) .....	\$ 1,400
Chapter 30 Design of sewers	
per lot fee .....	\$ 70
non-standard specifications .....	\$ 420
collection system (per lineal foot) .....	\$ 0.25
<u>sliplining existing mains (per lineal foot)</u> .....	<u>\$ 0.15</u>
Chapter 40 Sewage pumping station	
force mains (per lineal foot) .....	\$ 0.25
1000 gpm or less .....	\$ 700
greater than 1000 gpm .....	\$ 1,400
Chapter 60 Screening grit removal	
screening devices and comminutors .....	\$ 420
grit removal .....	\$ 420
flow equalization .....	\$ 700
Chapter 70 Settling .....	\$ 1,120
Chapter 80 Sludge handling .....	\$ 2,240
Chapter 90 Biological treatment .....	\$ 3,360
nonaerated treatment ponds .....	\$ 1,120
aerated treatment ponds .....	\$ 1,960
Chapter 100 Disinfection .....	\$ 900
Appendices A, B, C, & D (per design) .....	\$ 980

AUTH: 75-6-108, MCA  
IMP: 75-6-108, MCA

REASON: The proposed amendments to ARM 17.38.106 would create a new line item and a corresponding fee rate. The proposed new line item and fee are necessary to collect fees commensurate with the costs associated with conducting certain engineering reviews required under 75-6-108, MCA. Specifically, sliplining existing mains are currently included in the transmission distribution or collection system categories. The proposed amendment adds a new fee category for sliplining. Systems that would submit plans under this new definition and fee schedule would see a significant reduction in their review fees, from 25 cents/lineal foot to fifteen cents/lineal foot. The new rate will reduce fees for those reviews by approximately 40 percent. The new lower fee rate is necessary in order for the review fee to reflect actual review costs to the department, as required under 75-6-108(3), MCA. The department does not have sufficient information to estimate the number of fee payers nor the lineal feet of distribution or wastewater collection systems that may be affected by the reduced fee.

4. The proposed new rule provides as follows:

NEW RULE I SIGNIFICANT DEFICIENCY (1) For the purposes of this rule,



"significant deficiency" means any defect in design, operation, or maintenance of a public water supply system or public sewage system, or a failure or malfunction of the system, that the department determines causes, or has the potential to cause, the introduction of contamination into a drinking water supply or a source of ice. The term also includes fecal contamination in water used by a public water supply system.

(2) If the department determines that a significant deficiency exists with a public water supply system or a public sewage system, the department shall provide written notice to the system owner. The system owner shall correct the deficiency in accordance with a plan and timeframe approved by the department.

(3) If the department has reason to believe that a significant deficiency may exist with a public water supply system or a public sewage system, the department may request the system owner to provide additional information to assist the department in making a final determination. The system owner shall provide the department with the requested information. If the system owner fails to supply the requested information, the department may make a determination based on available information about the potential risk of contamination from the system to drinking water or a source of ice, and the department may require the system owner to take measures that the department determines are appropriate to prevent contamination.

AUTH: 75-6-103, 75-6-112, MCA

IMP: 75-6-103, 75-6-112, MCA

REASON: Proposed New Rule I is the second board rulemaking to implement statutory changes enacted during the 2009 Legislature. Sec. 1, Ch. 85, L. 2009 (SB 102). SB 102 directed the board to adopt rules requiring public water supply systems and public sewage systems to remedy certain deficiencies. The deficiencies listed in SB 102 include defects in design, operation, or maintenance of the system, and system failures or malfunctions, that could contaminate a drinking water supply or a source of ice. SB 102 also listed the presence of fecal contamination in the water used by a public water supply system. The board first implemented SB 102 in 2009 by incorporating by reference the federal drinking water rule for ground water sources. The board had earlier incorporated by reference federal drinking water rules for surface water sources. The federal ground water and surface water rules contain corrective action requirements for public water supply systems.

Proposed New Rule I is necessary to clarify the conditions that constitute a deficiency that requires corrective action. Based on SB 102, New Rule I defines "significant deficiency" as a defect in the design, operation, or maintenance of a public water supply or public sewage system, or a failure or malfunction of the system that causes, or has the potential to cause, the introduction of contamination into a drinking water supply or a source of ice. The rule clarifies that these significant deficiencies may arise based on the potential to contaminate any drinking water supply or source of ice, whether public or private. Based on SB 102, the definition of "significant deficiency" also includes fecal contamination in water used by a public water supply system.

New Rule I clarifies that the requirement to correct significant deficiencies applies to both public water supply systems and public sewage systems. The rule requires the owner of the public system to correct identified significant deficiencies in accordance with a timeframe and plan approved by the department. New Rule I allows the department to obtain additional information from the system owner related to the potential for the system to cause contamination. If the system owner fails to provide the requested information, the rule allows the department to require the system owner to take measures to prevent contamination. New Rule I is necessary to implement SB 102 and to provide guidance to public water supply systems and public sewage systems about how the department will implement SB 102.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to [ejohnson@mt.gov](mailto:ejohnson@mt.gov), no later than 5:00 p.m., November 16, 2012. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

6. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at [ejohnson@mt.gov](mailto:ejohnson@mt.gov), or may be made by completing a request form at any rules hearing held by the board.

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

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden

JAMES M. MADDEN

Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,

Chairman

Certified to the Secretary of State, October 1, 2012.

BEFORE THE DEPARTMENT OF TRANSPORTATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I, the amendment of ARM	)	ADOPTION, AMENDMENT AND
18.6.402, 18.6.403, 18.6.404,	)	REPEAL
18.6.405, 18.6.406, 18.6.407,	)	
18.6.408, 18.6.409, 18.6.420,	)	NO PUBLIC HEARING
18.6.421, 18.6.422, 18.6.423,	)	CONTEMPLATED
18.6.430, 18.6.431, 18.6.432,	)	
18.6.433, 18.6.434, 18.6.435,	)	
18.6.436, and repeal of ARM	)	
18.6.401 pertaining to Motorist	)	
Information Signs	)	

TO: All Concerned Persons

1. On November 11, 2012, the Department of Transportation proposes to adopt, amend, and repeal the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on November 1, 2012, to advise us of the nature of the accommodation that you need. Please contact Patrick J. Hurley, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; TTY/Montana Relay Service 800-335-7592, or (406) 444-7996; or e-mail phurley@mt.gov.

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

NEW RULE I SUPPLEMENTAL MESSAGE SIGNS (1) A portion of a logo sign panel may be used to display a supplemental message horizontally along the bottom of the logo sign panel, providing that the message displays essential motorist information, in conformance with all supplemental message standards contained in the MUTCD.

(2) All supplemental messages shall be displayed within the logo sign panel and conform to all MUTCD standards. A logo sign panel shall not display more than one supplemental message.

(3) Supplemental messages may include, but are not limited to, messages such as "diesel," "24 hours," "closed" and the day of the week when the facility is closed, "alternative fuels," and "RV access" after meeting any additional requirements of this rule for the appropriate type of supplemental message.

(4) An "auto repair" supplemental message may be displayed if qualified personnel are available to perform minor auto repair and tire repair at least eight hours per day, five days per week.

(5) A "24 hour" supplemental message may be displayed if the fuel pumps are operable with major credit cards or personnel 24 hours each day, seven days per week.

(6) An "alternative fuel" supplemental message, including "diesel," "propane," "LP-Gas," or a MUTCD standard symbol for these messages may be displayed when those services are offered at a business facility.

(7) A "recreational vehicle (RV) access" supplemental message may be displayed horizontally or as a circular symbol, in conformance with all standards in the MUTCD, if the business meets all of the appropriate following requirements for the type of business facility:

(a) all facilities' roadway access and egress must be hard surface, free of potholes, and must be at least 12 feet wide with a minimum swing radius of 50 feet to enter and exit the facility;

(b) all facilities' roadway access, egress and parking facilities must be free of any overhead obstructions (e.g., wires, branches, signs, canopies) up to 14 feet above the surface;

(c) all facilities must post directional signs on the site, as needed, to guide RVs to RV-friendly parking spaces and other on-site RV-friendly services, including additional guidance upon leaving a public highway and entering the facility's property;

(d) a facility requiring short-term parking, such as a restaurant, is required to have two or more spaces that are 12 feet wide and 65 feet long with a swing radius of 50 feet to enter and exit the spaces;

(e) a fueling facility with canopies is required to have a 14 foot clearance and those selling diesel fuel are required to have pumps with noncommercial nozzles;

(f) a fueling facility must allow for pull-through with a swing radius of 50 feet; and

(g) a campground facility must have two or more spaces that are 18 feet wide and 45 feet long.

AUTH: 60-5-503, MCA

IMP: 60-5-513, MCA

REASON: The proposed new rule is necessary to implement federal regulations as found in the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) which allow supplemental message signs on a logo sign panel. The MUTCD also specifically authorizes "RV access" supplemental message signs, in conformance with MUTCD specifications as a separate supplemental message sign category. The proposed new rule will implement necessary requirements which the businesses must meet in order to qualify for an RV access supplemental message sign.

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

18.6.402 DEFINITIONS (1) ~~When used in this subchapter the terms:~~  
~~business sign, crossroad, department, franchisee, motorist information sign, motorist~~

service, specific information sign, and tourist-oriented directional sign shall have the same meaning as in 60-5-502, MCA. "Business sign" or "logo sign panel" means a separately attached sign mounted on a motorist information sign panel to show the brand, symbol, trademark, or name, or combination of these, for a motorist service available on a crossroad at or near an interchange or intersection as per 60-5-502, MCA.

(2) "Combination sign" means a specific information (LOGO) sign displaying the availability of two or more types of services.

(3) "Conventional road" means a street or highway which has a traffic flow of more than 400 annual average daily traffic count. The term does not include a low volume road (less than 400 annual average daily traffic count) or a residential street.

(4) "Crossroad" means a marked route or other public road intersecting a freeway or divided highway for which access is provided at an interchange or intersection, as per 60-5-502, MCA.

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

(6) "Department" means the Montana Department of Transportation provided for in 2-15-2501, MCA, as per 60-5-502, MCA.

(7) "Franchisee" means a person awarded a franchise as provided in 60-5-505, MCA, as per 60-5-502, MCA.

(4) through (6) remain the same, but are renumbered (8) through (10).

~~(7)~~(11) "Interstate highway" or "federal-aid interstate highway" is defined in 60-1-103, MCA, and also means a highway on the federal-aid or national highway interstate system as defined in 60-1-103, MCA.

(8) and (9) remain the same but are renumbered (12) and (13).

(14) "Motorist information sign" or "mainline" means a rectangular sign panel located in the same manner as other official traffic signs, readable from the main traveled way, and that is a:

(a) specific information sign; or

(b) tourist-oriented directional sign, as per 60-5-502, MCA.

(15) "Motorist service" means gas, food, lodging, camping, recreation, and other tourist services, as per 60-5-502, MCA.

(10) remains the same but is renumbered (16).

~~(11)~~(17) "Primary highway" or "federal-aid primary system" is defined in 60-1-103, MCA, and also means a highway on the federal-aid state primary or national highway system as defined in 60-1-103, MCA.

(12) and (13) remain the same but are renumbered (18) and (19).

(20) "Specific information sign" or "LOGO sign" means a motorist information sign that is located on the interstate highway system and that contains:

(a) the words "GAS," "FOOD," "LODGING" or "CAMPING";

(b) directional information; and

(c) one or more individual business signs, as per 60-5-502, MCA.

(21) "Specific service ramp sign" or "ramp sign" means a sign installed along the ramp or at the ramp terminal of single-exit interchanges for facilities that have logo sign panels displayed along the main roadway, but the facilities are not readily visible from the ramp terminal.

(22) "Specific service trailblazer sign" or "trailblazer" means a guide sign with one to four logo sign panels that display business identification and directional

information for services, which are installed along crossroads for facilities that have logo sign panels along the main roadway and ramp, but require additional vehicle maneuvers.

~~(14) "Supplemental directional sign" means a specific information sign located adjacent to an exit ramp.~~

(23) "Tourist-oriented directional sign" or "TODS" means a motorist information sign located on the primary highway system or conventional roads to provide:

(a) business identification; and

(b) directional information for businesses, services, and activities of interest to tourists, as per 60-5-502, MCA.

~~(15) remains the same but is renumbered (24).~~

~~(16) "Trailblazer sign" means a small sign with the type of service, name of business, direction, and distance to a qualified business.~~

~~(17) and (18) remain the same but are renumbered (25) and (26).~~

AUTH: 60-5-503, MCA

IMP: 60-5-502, 60-5-513, MCA

REASON: The proposed amendments are necessary to add definitions used throughout the rules and to conform definitions to the terminology used in the federal MUTCD and 60-5-502, MCA, in order to avoid confusion for the public utilizing the Motorist Information Sign Program in Montana.

18.6.403 BUSINESS ELIGIBILITY FOR SPECIFIC INFORMATION (LOGO) SIGNS (1) All specific information (LOGO) signs must meet the specifications contained in the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) (2009), Sections 2.J. and 2.K., which are incorporated by reference, and a copy of which is available at //mutcd.fhwa.dot.gov.

~~(1)(2) In order to be a qualified business, To be eligible for placement of a business sign on a specific information (LOGO) sign panel, a business must provide one or more of the following services: gas, food, lodging, or camping. Priority shall be given to businesses within the applicable 3 three mile increment which are in continuous operation for 12 months per year.~~

~~(2)(3) A business must meet the following requirements:~~

~~(a) Gas-diesel vehicle service stations shall: To qualify for a GAS logo sign panel, a business must have:~~

~~(i) Provide vehicle services including gas or alternative fuel, oil, water, and air;~~

~~(ii) Provide restroom facilities and drinking water;~~

~~(iii) Provide a telephone available for public use; and~~

~~(iv) Be in continuous operation at least 12 hours per day, 7 seven days per week;~~

~~(v) May qualify for the additional words "auto repair" on the business sign provided qualified personnel are available to perform minor auto repair and tire repair at least 8 hours per day, 5 days per week; and~~

~~(vi) May qualify for the additional words "24 hour" provided the fuel pumps are operable with major credit cards or personnel 24 hours each day, 7 days per week.~~

~~(b) Food and restaurant facilities shall: To qualify for a FOOD logo sign panel, a business must have:~~

~~(i) Be approved or licensed licensing or approval as required by the state agency or political entity having jurisdiction;~~

~~(ii) Be in continuous operation for at least 10 hours per day, 7 to serve at least two meals per day, at least six days per week;~~

~~(iii) Provide restroom facilities; and~~

~~(iv) Provide a telephone available for public use.~~

~~(c) Lodging, motel, and hotel facilities shall: To qualify for a LODGING logo sign panel, a business must have:~~

~~(i) Be approved or licensed Licensing or approval as required by the state agency or political entity having jurisdiction;~~

~~(ii) Provide a telephone available for public use; and~~

~~(iii) Provide adequate sleeping accommodations; and~~

~~(iv) restroom facilities.~~

~~(d) Camping and campground facilities shall: To qualify for a CAMPING logo sign panel, a business must have:~~

~~(i) Be approved or licensed Licensing or approval by the state agency or the political entity having jurisdiction;~~

~~(ii) Provide modern sanitary facilities and drinking water; and~~

~~(iii) Provide adequate camping and parking spaces.~~

~~(3)(4) If available spaces for any of the above service categories are not fully utilized by businesses strictly meeting the corresponding criteria, the department may at its discretion, ~~permit~~ allow other businesses in the same service category meeting the majority of the criteria to utilize the otherwise unused spaces. Such businesses' right to utilize spaces shall be reevaluated on an annual basis. Should the demand by businesses fully meeting the criteria increase, the "all service" businesses shall be given priority when considering annual renewal of contracts.~~

AUTH: 60-5-503, MCA

IMP: 60-5-514, ~~60-5-522~~, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for LOGO signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5. Subsections (2)(v) and (vi) are deleted to move the information to New Rule I on Supplemental Message signs. The citations are amended to remove an unnecessary statutory citation.

18.6.404 LOCATION OF QUALIFIED BUSINESSES FOR SPECIFIC INFORMATION (LOGO) SIGNS (1) Specific information (LOGO) signs may be erected only for qualified businesses located within three miles of an interchange as measured from the gore of the exit ramp along public highways to the nearest point



of intersection of the driveway of the qualified business and public highway, except as provided below.

(2) ~~If no qualified business within a service category under ARM 18.6.403(1) exists within 3 miles of the interchange, then successive 3-mile increments up to 15 miles may be considered. If, within the three mile limit, facilities for the services being considered are not available or choose not to participate in the program, the limit of eligibility may be extended in three mile increments until one or more facilities for the services chooses to participate, or until 15 miles is reached, whichever comes first.~~ If considered, ~~then~~ all qualified businesses within the service category and within the successive increment may be included, but not to exceed the maximum capacity of the specific service sign.

(3) remains the same.

AUTH: 60-5-503, MCA

IMP: 60-5-512, MCA

REASON: The proposed amendment is necessary to clarify wording on eligibility for businesses which may be outside the initial three mile limit from the highway. The proposed language will bring the rule into conformity with the MUTCD and 60-5-512, MCA.

18.6.405 SPACING AND LOCATION OF SPECIFIC INFORMATION (LOGO) SIGNS (1) Specific information (LOGO) signs or mainline signs may be erected and maintained within the right-of-way of the interstate highway system.

~~(1)(2)~~ Specific information (LOGO) signs shall be erected not less than 800 feet in advance of the exit direction sign at interchanges installed between the preceding interchange and at least 800 feet in advance of the exit direction sign at the interchange from which the services are available.

~~(2)(3)~~ The exact location of specific information (LOGO) signs and supplemental directional specific service ramp signs shall be determined by the franchisee, subject to approval by the department; however, the signs shall be located so as to avoid conflict with other signs within the highway right-of-way. Lateral clearance and height shall be as specified in 2A-23 and 2A-24 of the Manual on Uniform Traffic Control Devices the MUTCD.

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

(9) Specific information (LOGO) signs shall be located to take advantage of natural terrain, to have the least impact on the scenic environment, and to avoid visual conflict with other signs within the highway right-of-way.

AUTH: 60-5-503, MCA

IMP: 60-5-511, 60-5-513, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the Federal Highway Administration MUTCD for LOGO signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5.

18.6.406 SPECIFIC INFORMATION (LOGO) SIGN DESIGN AND ORDER

(1) Specific information (LOGO) signs shall comply with the standards for number of signs along an approach to an interchange or intersection provided in ~~2G-5~~ of the Manual on Uniform Traffic Control Devices the MUTCD and the specifications in the contract between the department and the franchisee.

~~(2) Six business signs for gas, food, lodging, and camping will be available in each direction of travel at any interchange on an interstate highway except that at an interchange where there are more than six eligible businesses for a specific service, the excess eligible businesses may be combined on other specific service signs upon department approval. In the event other eligible businesses in other categories apply for participation, they shall be given priority over the excess business(es) upon contract expiration. The number of specific information (LOGO) signs along an approach to an interchange or intersection, regardless of the number of service types displayed, shall be limited to a maximum of four.~~

(3) No more than three types of services shall be represented on any sign or sign assembly. If three types of services are displayed on one sign, then the logo sign panels shall be limited to two for each service type (for a total of six logo sign panels). If two types of services are displayed on one sign, then the logo sign panels shall be limited to either three for each service type (for a total of six logo sign panels), or four for one service type and two for the other service type (for a total of six logo sign panels).

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

~~(4)(5) Where there is insufficient space for all four specific service signs, or where there are business signs of two or more services competing for the unused space of another service, the following priority shall govern: GAS, FOOD, LODGING, and CAMPING. Where there is greater demand for signs in one service category than there is in a higher priority category, the franchisee may request approval from the department to set a different priority at that interchange. However, only two service categories may be displayed on a sign.~~

AUTH: 60-5-503, MCA

IMP: 60-5-512, 60-5-513, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for LOGO signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5.

18.6.407 SUPPLEMENTAL DIRECTIONAL SPECIFIC SERVICE RAMP SIGNS (1) ~~The information displayed on specific information signs must be repeated on supplemental directional signs when the qualified businesses identified on the specific information signs are not visible to traffic at the exit ramp terminus. Specific service ramp signs may be installed at single-exit interchanges along the ramp or at the ramp terminal for facilities that have logo sign panels displayed along the main roadway if the facilities are not readily visible from the ramp terminal. Directions to the service facilities shall be indicated by arrows on the ramp signs. Logo sign panels on the ramp signs shall be duplicates of those displayed in the~~

specific service signs located in advance of the interchange, but shall be reduced in size to meet standards in the MUTCD.

(2) Where the qualified business is located more than one mile from the interchange, mileage must may also be given on the supplemental directional specific service ramp sign. Specific service ramp signs should include distances to the services facilities.

(3) remains the same.

~~(4) Supplemental directional signs shall be located on the highway right-of-way along the interchange ramp or at the ramp terminal.~~

~~(5)~~(4) The exact location of the supplemental directional specific service ramp signs shall be determined by the franchisee, subject to review by the department.

~~(6)~~(5) A minimum of 100 feet is required between successive supplemental directional specific service ramp signs.

~~(7) Supplemental directional signs shall conform to the specifications stated in the contract between the department and the franchisee.~~

AUTH: 60-5-503, MCA

IMP: 60-5-513, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for LOGO signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5.

18.6.408 SPECIFIC SERVICE TRAILBLAZER SIGNS (1) ~~Trailblazer signs must be installed along a highway for a qualified business if the business cannot be seen from the highway.~~ Specific service trailblazer signs may be installed along crossroads where the route to the business requires a direction change, where it is questionable as to which roadway to follow, or where additional guidance is needed. Where it is not feasible or practical to install specific service trailblazer signs to a business, the business shall not be considered eligible for signing from the ramp and main roadway. A specific service trailblazer sign shall not be installed at the point where the business is visible from the roadway and its access is readily apparent.

~~(2) Trailblazer signs may be located on the right-of-way of the public highway near all intersections where the direction of the route changes or where it might be questionable as to which roadway to follow.~~

~~(3)~~(2) The location of other traffic control devices shall take precedence over the location of a specific service trailblazer sign. If conflicts with existing signs arise, the exact location of trailblazer signs shall be determined by the department.

~~(4) If a trailblazer sign must be erected along a public highway which is not under the maintenance jurisdiction of the department, the franchisee shall obtain written permission from the applicable authority before the sign may be erected.~~

~~(5)~~(3) Each specific service trailblazer sign or sign assembly shall be limited to no more than four logo sign panels. The logo sign panels shall be duplicates of those displayed on the specific service ramp signs. ~~Trailblazer Specific service~~

trailblazer signs shall be erected in the same order as specific information (LOGO) signs.

~~(6)~~(4) Trailblazer Specific service trailblazer signs shall indicate, ~~by arrow,~~ the direction to the qualified business and shall indicate mileage where the business is located more than 4 one mile from the sign. Appropriate legends, such as directional arrows or a word message (e.g., "next right" or "second right") shall be displayed with the logo sign panel to provide proper guidance.

~~(7)~~(5) All necessary specific service trailblazer signs must be erected before a business sign may be installed.

~~(8)~~(6) The department may review the franchisee's determination of number and location of specific service trailblazer signs.

AUTH: 60-5-503, MCA

IMP: 60-5-513, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for LOGO signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5. The proposed amendment will delete (4), as the signs will only be erected within MDT right-of-way, and not in areas under the jurisdiction of local government authorities.

18.6.409 BUSINESS SIGNS – LOGO SIGN PANELS (1) A business sign, or logo sign panel shall be an identification symbol, identification trademark, or a word message. Each business sign shall be placed on a separate logo sign panel that shall be attached to the specific service sign. Only a business name or trade name shall be used on business signs. If a nationally, regionally, or locally recognized trade name is available, it shall be used in preference to any other form of business identification.

(2) Any message which advertises rather than identifies a business is prohibited. ~~On "GAS" business signs, the word "diesel," "propane," or a department approved symbol for diesel or propane may be included on the business sign.~~

(3) remains the same.

~~(4) A business sign shall normally have a white message on a blue background; however, colors consistent with customary use may be used with nationally, regionally, or locally known trade names. The principal legend on the business sign shall be a minimum of 4 inches in height. Where a trade name is used alone for a business sign, any legend on the trade name shall be in proportion to the size. A business sign shall have a white border. When trade names are used alone, the border may be omitted. Symbols or trademarks used alone for a logo shall be reproduced in the colors and general shape consistent with customary use, and any integral legend shall be in proportionate size. A word message logo, not using a symbol or trademark, shall conform to color and letter height standards in the MUTCD.~~

(5) Business signs (logo sign panels) shall initially be placed on a specific information sign, having two rows of such signs in order of increasing distance as follows: Closest, upper left; second, lower left; third, upper center; fourth, lower

center; fifth, upper right; sixth, lower right. On specific information (LOGO) signs with a single row of business signs, individual business signs shall be placed in order of increasing distance from left to right. Relative distance of each qualified business to the interchange shall be determined at the time of lease application. Later additions may be made without rearranging the remaining business signs.

(6) The order of arrangement for business signs on ~~supplemental-directional~~ specific service ramp signs and specific service trailblazer signs will be determined by the direction of the arrow. Businesses located on the left shall be designated at the top of the sign.

AUTH: 60-5-503, MCA  
IMP: 60-5-512, 60-5-513, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for LOGO signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5. Some wording on use of symbols was moved from subsection (2) of this rule to New Rule I on Supplemental Message signs.

18.6.420 TOURIST-ORIENTED DIRECTIONAL SIGNS (TODS) – GENERAL

~~(1) Tourist-oriented directional signs may be erected within a rural area. All~~ tourist-oriented directional signs (TODS) must meet the specifications contained in the Federal Highway Administration Manual on Uniform Traffic Control Devices (MUTCD) (2009), Sections 2.J. and 2. K., which are incorporated by reference, and a copy of which is available at //mutcd.fhwa.dot.gov.

~~(2) Tourist-oriented directional signs may be erected within the corporate limits of a town or city with a population of less than 15,000 persons. If the consent of the local government is required, it shall be provided in writing to the franchisee.~~

~~(3) Tourist-oriented directional signs may be erected for an activity not visible and identifiable from the primary highway during the period the activity is operating and open to the public. For the purposes of this rule, "visible" means the activity of an on-premise sign can be clearly seen and readable from points established for stopping sight distance. "Identifiable" means that the activity's structure(s), general developed area or on-premise sign(s) clearly conveys specific identification of the activity from points established for stopping sight distance. On-premise signs of 40 square feet or less are not considered in the determination of visible or identifiable as defined in this rule. General guidance for the points used to establish "visible" and "identifiable" shall be measured from the business approach intersection using as a minimum the following chart for stopping sight distance.~~

<del>Posted speed limit (in miles per hour)</del>	<del>Estimated stopping sight distance (in feet)</del>
<del>25</del>	<del>150</del>
<del>30</del>	<del>200</del>
<del>35</del>	<del>250</del>
<del>40</del>	<del>325</del>
<del>45</del>	<del>400</del>

50  
55

475  
550

In areas without a posted speed limit, the maximum distance used for the purposes of determining visibility shall be 600 feet.

(2) Tourist-oriented directional signs (TODS) are guide signs with one or more sign panels that display the business identification of and directional information for eligible business, service and activity facilities.

(3) Tourist-oriented directional signs (TODS) may be erected and maintained within the right-of-way of the primary highway system or on conventional roads.

(4) A facility shall be eligible for tourist-oriented directional signs (TODS) only if it derives its major portion of income or visitors during the normal business season from road users not residing in the area of the facility. Tourist-oriented directional signs (TODS) may include businesses involved with seasonal agricultural products.

(5) A tourist-oriented directional sign (TODS) may not be erected if the place of business is readily visible from the main traveled roadway, unless the business meets the criteria for a TODS sign, but does not qualify for a permitted off-premise sign under the Montana Outdoor Advertising Act statutes and rules, as determined by the department.

(6) Where both tourist-oriented directional signs (TODS) and specific information (LOGO) signs would be needed at the same intersection, the tourist-oriented directional sign (TODS) shall incorporate the needed information from, and be used in place of, the specific information (LOGO) sign.

~~(4)~~(7) An activity which is located more than 5 and less than 15 miles from a primary highway may request a waiver from the department for a tourist-oriented directional sign (TODS) panel. The waiver shall be given when the activity provides a service different from services located within ~~5~~ five miles of the intersection and where the activity is not located within ~~5~~ five miles of another primary highway or interstate where specific service or tourist-oriented signing is available ~~to it~~.

AUTH: 60-5-503, MCA

IMP: 60-5-519, 60-5-520, 60-5-521, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for TODS signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5. The amendment to the citations is necessary to add the correct statute being implemented by the rule.

18.6.421 TOURIST-ORIENTED DIRECTIONAL TRAILBLAZER ADVANCE SIGNS (1) ~~Where the location of a business requires additional signing, trailblazer signs shall be erected. Advance signs should be limited to those situations where sight distance, intersection vehicle maneuvers, or other vehicle operating characteristics require advance notification of the destinations and their directions.~~

~~(2) Where trailblazer signs must be erected along public highways not under the maintenance jurisdiction of the department, the franchises shall obtain written permission from the applicable authority before the signs may be erected. The~~

design of the advance sign should be identical to the design of the intersection approach sign, but directional arrows and distances to the destinations should be omitted, and an action message (e.g., "next right" or "ahead") should be placed on the sign above the business identification sign panel. The legend "right ½ mile" or "left ½ mile" may be used on advance signs when there are intervening minor roads.

(3) No tourist-oriented directional sign (TODS) may be erected until all necessary trailblazer advance signs are in place.

AUTH: 60-5-503, MCA

IMP: 60-5-521, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for TODS signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5. The MUTCD specifically allows TODS advance signs for TODS destinations which require additional vehicle maneuvers, which information will be added to the rule through the proposed changes. The proposed amendment will delete (2) as the signs will be erected within MDT right-of-way, and will not be located in areas under a local governmental authority's jurisdiction.

18.6.422 DESIGN OF TOURIST-ORIENTED DIRECTIONAL SIGNS (TODS) AND PANELS ~~(1) Tourist-oriented directional signs shall have reflective blue background with reflective white legend and where there are intervening intersecting roadways, may display additional information such as "second right," "second left," "junction Highway 2," etc., at the top. The signs shall be six feet wide and as high as necessary to accommodate a maximum of four individual panels. They shall meet the specifications provided in the contract between the department and the franchisee.~~

~~(2) The tourist-oriented directional sign panels shall contain space for two lines of legend in 6-inch letters, a directional arrow and distance to the activity. The legend shall be the activity name only; however, appropriate service or recreational symbols and logos may be used if reduced to appropriate size. Promotional advertising and symbols or logos resembling official traffic control devices are prohibited.~~

~~(3) When approved symbols or logos are used, they may not exceed the height of two lines of word legend. If used with a word legend, the symbol or logo shall be placed to the left of the word legend. Times of operation may be displaced on the tourist-oriented directional sign panel if necessary for the convenience of the motorist. When times of operation are displayed, they must be incorporated into the two lines of legend.~~

(1) Tourist-oriented directional signs (TODS) shall have one or more sign panels for the purpose of displaying the business identification of and directional information for eligible facilities. The content of the legend on each sign panel shall be limited to the identification and directional information for no more than one eligible business, service or activity facility. The legends shall not include promotional advertising.

(2) Each sign panel shall have a maximum of two lines of legend including no more than one symbol, a separate directional arrow, and the distance to the facility displayed beneath the arrow. Arrows pointing to the left or up should be at the extreme left of the sign panel. Arrows pointing to the right should be at the extreme right of the sign panel. Symbols, when used, should be to the left of the word legend or logo sign panel.

(3) General service sign symbols and the symbols for recreational and cultural interest area signs which meet all MUTCD standards, may be used. Logo sign panels for specific businesses, services and activities may also be used. Upon an applicant's request through the franchisee, the department shall determine whether hours of operation may be displayed on the sign panels.

(4) The tourist-oriented directional sign (TODS) may display the word message "tourist activities" at the top of the sign.

(5) Logos resembling official traffic control devices are prohibited.

(6) Tourist-oriented directional signs (TODS) shall meet all MUTCD standards for color and height of letters.

AUTH: 60-5-503, MCA

IMP: 60-5-521, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for TODS signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5.

#### 18.6.423 TOURIST-ORIENTED DIRECTIONAL SIGN (TODS)

INSTALLATION (1) Tourist-oriented directional signs shall be installed, at a minimum, in accordance with the chart for stopping sight distance pursuant to ARM 18.6.420(3) and may be installed farther from the intersection when necessary for motorist safety and convenience. Tourist-oriented directional signs should not be installed less than 200 feet in advance of the intersection and should maintain a minimum of 200 feet between tourist-oriented directional signs and any other highway signs, with the exception of no parking, loading zone and similar signs. However, spacing of less than 200 feet between signs may be allowed with department approval.

(2) In areas where speeds of 45 miles per hour and less are posted, sign spacing may be reduced, if necessary, with a minimum spacing of 100 feet between tourist-oriented directional signs and other highway signs. No parking, loading zone or similar signs shall not be considered for minimum spacing requirements.

(3) The right turn sign shall be the closest to the intersection with the left turn sign being the farthest in advance of the intersection.

(4) The advance tourist-oriented directional sign "1/2 Mile" or "Next Right (or Left)" may not be used unless the department determines that it is needed for highway operational safety.

(5) Signs may be erected for facilities in the ahead direction. The legend AHEAD in appropriate letter size may be used in lieu of directional arrows.



~~(6) Signing for right, left or ahead directions may be allowed for visible and identifiable activities to address safety problems upon department approval.~~

(1) Tourist-oriented intersection approach signs shall be located at least 200 feet in advance of the intersection. Signs should be spaced at least 200 feet apart and a least 200 feet from other traffic control devices.

(2) If used, advance signs shall be located approximately ½ mile from the intersection with 500 feet between the signs. In the direction of travel, the order of advance sign placement should be to show the destinations to the left first, then destinations to the right, and last, the destinations straight ahead.

(3) Tourist-oriented directional signs (TODS) may be placed farther from the edge of the road than other traffic control devices.

(4) The location of other traffic control devices shall take precedence over the location of tourist-oriented directional signs (TODS).

(7) through (10) remain the same but are renumbered (5) through (8).

(9) A tourist-oriented directional sign (TODS) must be placed at least 30 feet from the edge of the pavement, where possible.

AUTH: 60-5-503, MCA

IMP: 60-5-521, MCA

REASON: The proposed amendments are necessary to bring the rule language into compliance with the federal MUTCD for TODS signs as well as the Montana Motorist Information Sign Program statutes found at Mont. Code Ann. Title 60, Chapter 5, Part 5.

18.6.430 APPLICATION PROCEDURE AND NOTICE ~~(1) The franchisee shall give at least one public notice of desire to erect specific information sign panels at an interchange or tourist-oriented directional signs at an intersection or shall contact each qualified business in the area, or both, at least 30 days prior to the deadline set for receiving applications to place business signs on a specific information sign or tourist-oriented directional sign. The notice shall be published in a newspaper published in the county or counties where the signs will be erected. The notice shall specify from whom applications may be requested, and where and to whom the applications must be submitted for consideration.~~

~~(2) The franchisee shall retain complete records showing the notice and all contacts with local businesses for at least one year after the notice and contacts were made. These records are subject to review by the department.~~

~~(3)~~(1) The franchisee shall require that requests An application for space on specific information (LOGO) signs or tourist-oriented directional signs (TODS) shall be submitted to him the franchisee.

~~(4)~~(2) The franchisee shall require that all requests An application shall only be made by the owner of a qualified business or his the owner's designee.

~~(5)~~(3) In the event that If the number of requests to place business signs on information sign panels, or number of requests to place tourist-oriented directional sign (TODS) panels exceed the available space, the franchisee shall use the following criteria to determine the allocation of spaces on information sign panels.:

(a) through (c) remain the same.

~~(6) The franchisee shall use the same criteria as provided in (5) to determine allocation of space on tourist-oriented directional signs. The business nearest the intersection shall be given priority.~~

AUTH: 60-5-503, MCA

IMP: 60-5-504, 60-5-505, MCA

REASON: The proposed amendments are necessary to clarify application processes and requirements for specific information (LOGO) signs and tourist-oriented directional signs (TODS). The proposed amendments will also delete an outdated requirement for public notices, which requirement was only necessary at the inception of the Motorist Information Sign Program some 23 years ago. The proposed amendment to the citation will add a statute being implemented by the rule.

18.6.431 LEASE AGREEMENTS (1) ~~The franchisee shall require the owner to shall~~ sign a lease agreement with the franchisee on a form approved by the department, and The lease agreement shall obtain contain the written assurance required from the owner ~~under 60-5-514(2) or 60-5-522(2), MCA.~~ that the owner is in conformity with all applicable laws concerning the provision of public accommodations without regard to race, color, sex, culture, social origin or condition, or political or religious ideas.

(2) ~~Before approving the lease agreement the~~ The franchisee shall review the owner's qualifications for compliance with the applicable criteria and ~~may not shall only~~ approve the lease agreement if the criteria are ~~not~~ met.

(3) remains the same.

(4) ~~Lease agreements shall be valid for a period not to exceed five full years between the franchisee and businesses participating in the motorist information sign program must be for a minimum of one year.~~

(5) ~~When an owner meets the applicable requirements and the required fees have been paid, the~~ The franchisee shall install the business sign panel within 30 calendar days of the payment of the fees if the specific ~~service~~ information (LOGO) sign assembly has already been installed or within 120 calendar days of the payment of fees if the specific ~~service~~ information (LOGO) sign assembly has yet to be installed. The franchisee shall install the tourist-oriented directional sign (TODS) within 120 days of the payment of fees.

(6) ~~The franchisee shall allow the owner or his legal successor during the term of the agreement to~~ The owner may request a change to the business sign or tourist-oriented directional sign (TODS) copy during the term of the lease agreement so long as if the copy conforms to the statutes and these rules. The cost of changes in the copy may be charged to the owner. All installation of changed copy shall be conducted by the franchisee. The owner may also be charged an additional fee for each sign removed and remounted by the franchisee at the request of the owner.

(7) remains the same.

(8) ~~Non "all-service" agreements shall be evaluated on an annual basis as provided for in ARM 18.6.403(3).~~

AUTH: 60-5-503, MCA  
IMP: 60-5-505, 60-5-514, MCA

REASON: The proposed amendments are necessary to clarify lease agreement requirements between the franchisee and the sign owners to avoid possible confusion over timing of sign installation or change in copy during the lease agreement term.

18.6.432 MAINTENANCE (1) through (3) remain the same.

(4) All sign structures are the property of the state and only the franchisee or state-authorized personnel may enter the right-of-way to erect, maintain, repair, change copy, or access the sign structure in any manner for any reason.

(5) The department must notify the franchisee 30 days prior to any highway maintenance, highway construction or reconstruction project being let, or construction operations of any kind which will require removal of any motorist information signs. After completion of the maintenance or construction operations, the department will notify the franchisee that the signs may be replaced.

(4)(6) The franchisee shall be responsible for the cost of the relocation of any of his the signs for highway improvements, maintenance, or construction, and shall complete the relocation removal within 60 30 days after notification that the sign must be removed. The department's project manager will coordinate removal times with the franchisee.

AUTH: 60-5-503, MCA  
IMP: 60-5-505, MCA

REASON: The proposed amendments are necessary to add a subsection on notification of highway maintenance and construction projects which will require removal of any motorist information signs. The proposed amendments will clarify the department's notification process and timetable.

18.6.433 REMOVAL OF SIGNS AND COVERING SEASONAL SIGNS

(1) The franchisee must notify the owner by certified mail a minimum of thirty 30 days in advance of the removal of his or her the owner's business sign or tourist-oriented directional sign (TODS) for any cause.

(2) Business signs or tourist-oriented directional signs (TODS) may be removed for any of the following:

(a) remains the same.

(b) Violation of the provisions of 60-5-514 or 60-5-522, MCA statute or administrative rule, including nondiscrimination statutes.

(c) Failure to meet the minimum criteria to qualify for the specific service information (LOGO) sign program or the tourist-oriented directional sign (TODS) program.

(3) The department shall solely make the determination whether statutes or rules have been violated by the owner, after investigation.

(3)(4) If a business is closed due to fire, accident, remodeling, or other emergencies for more than 7, but not more than 90 days, then the franchisee shall

have the business sign or the tourist-oriented directional sign (TODS) covered to prevent inconvenience to the traveling public. The business shall not lose its priority or be required to reapply prior to the normal expiration of its contract. Extensions of time beyond 90 days may be granted by the franchisee, for good cause, in such case where including but not limited to insurance claims or financial arrangements which require additional time. ~~However, an owner who, due to his or her own negligence,~~ An owner who fails to open within the 90-day period due to the owner's negligence may lose ~~his or her~~ the right to occupy the specific information (LOGO) sign panel or tourist-oriented directional sign (TODS) panel.

(5) A business that owns any outdoor advertising structure in violation of the Montana Outdoor Advertising Act, Title 75, chapter 15, part 1, MCA, may not be eligible for business identification on a tourist-oriented directional sign (TODS) for one year after the illegal outdoor advertising structure is removed unless the owner voluntarily removes it within 45 days of receiving notice under 75-15-131, MCA.

~~(4)~~(6) Within ~~5~~ five working days of closure of the a seasonal business, the franchisee shall cover or remove the signs for ~~businesses which are operated on a seasonal basis~~ or shall prominently display the word "closed" across the business sign. Where all of the businesses on a specific information (LOGO) sign are closed, the entire sign shall be removed.

AUTH: 60-5-503, MCA

IMP: 60-5-505, 60-5-522 MCA

REASON: The proposed amendments are necessary to clarify language on removal of motorist information signs and procedures in the event of a business closure. The proposed amendments will clarify the process for both the franchisee and the sign owners.

18.6.434 GENERAL SERVICE SIGNS (1) At interchanges on the interstate system where none of the qualified businesses wish to participate in the program, the department will maintain the existing general service sign. The department will not install a new general service sign along interstate or primary highways for businesses which qualify for a specific information (LOGO) sign or a tourist-oriented directional sign (TODS).

(2) The department will remove The any existing general service signs at any interchange will be removed by the department when the first a specific information (LOGO) sign panel is installed for a business identified by a general service sign.

(3) The department will remove an existing general service sign on any primary highway When when a tourist-oriented directional sign (TODS) is erected for a business identified by a general service sign, the department will remove the general service sign.

(4) No new general service signs may will be erected along interstate highways for businesses which qualify for specific information (LOGO) signs or along primary highways for businesses which qualify for tourist-oriented directional signing signs (TODS).

AUTH: 60-5-503, MCA

IMP: 60-5-501, MCA

REASON: The proposed amendments are necessary to clarify the rule language on existing general service signs. The proposed language will avoid confusion by business owners regarding existing general service signs, as well as business owners seeking placement on a general service sign or a motorist information sign.

18.6.435 FEES FOR POSTING ON SPECIFIC INFORMATION SIGN PANELS AND TOURIST-ORIENTED DIRECTIONAL SIGNS (1) The fee for placing business signs on specific information (LOGO) sign panels or tourist-oriented directional sign panels (TODS) may include the prorated cost for fabrication, erection, maintenance, or servicing of ~~specific information and business signs~~; removal or covering business signs; other costs associated with the program, including the department's cost in administering the program, and reasonable profit for the franchisee operating the program. The fee may include the ~~supplemental directional~~ specific service ramp sign if needed, and specific service trailblazer signs, and tourist-oriented advance signs (TODS) if needed. The fee for each space on specific information (LOGO) sign panels and tourist-oriented directional sign (TODS) panels shall be the same for all businesses.

~~(2) Similar criteria to set fees for tourist-oriented directional signs shall be used.~~

~~(3)~~(2) The department shall review the fees charged by the franchisee and any subsequent proposed increases for reasonableness and shall authorize them if they are in compliance with 60-5-510, MCA and approve the fees if appropriate.

AUTH: 60-5-503, MCA

IMP: 60-5-510, MCA

REASON: The proposed amendment is necessary to clarify the rule language by combining the fee requirements for both specific information (LOGO) signs and tourist-oriented directional signs (TODS) to avoid confusion by either the business sign owners or the franchisee.

18.6.436 OVERSIGHT OF THE FRANCHISEE BY THE DEPARTMENT

(1) The department may review all proposed sign locations ~~for signs to determine; if they comply with the rules or if there is a conflict with existing signs or future sign installations.~~ The department may review an agreement with an owner, check businesses for compliance with Title 60, chapter 5, part 5, MCA, and this subchapter.

(a) franchisee compliance with statutes and rules;

(b) owner compliance with the motorist information sign program statutes and rules;

(c) owner compliance with nondiscrimination statutes; and

(d) whether a conflict exists with existing signs or future sign installations.

(2) Complaints about the motorist information sign program or the actions of the franchisee ~~in relation to the program~~ may be submitted in writing to the department. Complaints shall be investigated by the department which will provide a

written response to the complainant. A copy of the complaint and the response shall be provided to the franchisee.

AUTH: 60-5-503, MCA

IMP: 60-5-505, MCA

REASON: The proposed amendments are necessary to clarify rule language on oversight of the franchisee by the department. The proposed rule language will help the franchisee and the public to comply with all appropriate statutes and rules.

5. The department proposes to repeal the following rule:

18.6.401 POLICY STATEMENT

AUTH: 60-5-503, MCA

IMP: 60-5-513, MCA

REASON: The proposed repeal is necessary because the current rule is an archaic recitation of statutes being implemented, and a repetition of the purpose statement contained in 60-5-501, MCA. The existing rule is therefore not necessary to implement or explain statutory language.

6. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Patrick J. Hurley, Department of Transportation, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6068; fax (406) 444-7254; or e-mail phurley@mt.gov, and must be received no later than 5:00 p.m., November 8, 2012.

7. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Patrick J. Hurley at the above address no later than 5:00 p.m., November 8, 2012.

8. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 51 persons based on the 512 motorist information sign customers in Montana.

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

program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 6 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Carol Grell Morris  
Carol Grell Morris  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 24.101.413 renewal dates and ) PROPOSED AMENDMENT,  
requirements, 24.122.301, ) ADOPTION, AND REPEAL  
24.122.405, 24.122.410, and )  
24.122.505 boiler operating engineer )  
licensure, 24.142.301, 24.142.302, )  
24.142.402, 24.142.404, 24.142.502, )  
24.142.503, 24.142.504, 24.142.506, )  
24.142.507, 24.142.509, )  
24.142.2101, 24.142.2102, )  
24.142.2103, and 24.142.2401 )  
licensure of elevator contractors, )  
inspectors, and mechanics, )  
24.301.401 national electrical code, )  
24.301.602, 24.301.606, 24.301.607, )  
24.301.610, and 24.301.623 elevator )  
code, 24.301.710, 24.301.711, )  
24.301.718, 24.301.719, and )  
24.301.724 boiler safety, the adoption )  
of NEW RULES I definitions and II )  
tag-out and lock-out - stop orders, )  
and the repeal of ARM 24.142.401 )  
and 24.142.501 elevator licensing, )  
24.301.608, 24.301.609, and )  
24.301.611 elevator inspection and )  
variances )

TO: All Concerned Persons

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

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on October 26, 2012, to advise us of the nature of the accommodation that you need. Please contact Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2053; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; e-mail dcook@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The department is eliminating the lists of elevators and other conveyances over which it



has jurisdiction from these rules and will instead reference "conveyance" and "conveyance work" as defined in ARM 24.142.301 and New Rule I. It is reasonably necessary to make this change throughout these rules to shift reliance to the covered equipment in 50-60-704, MCA, instead of repeating the laundry list over and over again in rule. Referring to the statute, which is the most accurate and authoritative source, will ensure consistency in application of the rules, and will help avoid inadvertent errors in repeating the list in multiple locations within the rules.

Additionally, authority and implementation cites are being amended throughout these rules to accurately reflect all statutes implemented through the rules, provide the complete sources of the department's rulemaking authority, and delete erroneous references to 50-60-201, 50-60-203, and 50-60-211, MCA.

Accordingly, the department has determined it is reasonably necessary to amend certain rules. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

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

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

(l)	Elevator Program	Contractor	<del>Biennially</del> <u>Annually</u>	April 1
		Inspector	<del>Biennially</del> <u>Annually</u>	April 1
		Mechanic	<del>Biennially</del> <u>Annually</u>	April 1

(m) through (7) remain the same.

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

REASON: The department is shifting from a biennial to an annual renewal period to allow the department to more accurately forecast the elevator licensure program's budget and manage deficits or surpluses.

24.122.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) "Boiler classification" means, for the purpose of determining the appropriate class of boiler operating engineer's license required:

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

(2) "Department" means the ~~department of labor and industry~~ Department of Labor and Industry.

(3) "Hot water supply boiler" means a boiler, completely filled with water, intended for operation at pressures not exceeding 160 psig and/or temperatures exceeding 250 degrees F., measured at or near the boiler outlet, that furnishes hot water to be used external to itself ~~providing potable water within the temperature and pressure limits established by the state plumbing code, and which may be monitored by any person holding a current low pressure boiler operating engineer's license or limited low pressure operating engineer license.~~

(4) through (6) remain the same.

(7) ~~Additional definitions related to boiler operators are in building code rules found at ARM 24.301.711. The department incorporates by reference the definitions contained in the September 30, 2004, version of~~ related to boiler operators in building code rules at ARM 24.301.711, which include the following terms:

(a) through (7)(j) remain the same.

AUTH: 50-74-101, MCA

IMP: 50-74-101, MCA

REASON: It is reasonably necessary to amend (3) so that the definition of "hot water supply boiler" is the same as in the boiler safety definitions found in ARM 24.310.711. The department is striking the unnecessary revision date of ARM 24.301.711 from (7) to eliminate wordiness and redundancy.

24.122.405 APPROVAL OF TRAINING COURSES (1) through (3)(a) remain the same.

(b) a list of books, publications, and source material to be utilized in the training course;

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

(5) Instructors or entities approved to conduct a training course shall provide a certificate of completion to those persons successfully completing the course, which includes the specific name of the approved course, the number of hours of total training, the name of the person receiving the training, the location (city) of the training, and the date of completion.

~~(6) All training programs currently approved will have to be reevaluated by July 13, 2005. Those programs not evaluated by July 13, 2005 will not be accepted by the department as credit for experience for license applicants.~~

AUTH: 50-74-101, MCA

IMP: 50-74-304, MCA

REASON: The department is amending (5) to require additional information on boiler operator engineer training course certificates. The department determined this is necessary to evaluate the substance of the training, the validity of the certificate, and attendance by the individual claiming credit for the course. The department is also deleting (6) to eliminate a moot date that has passed.

24.122.410 RESPONSIBILITY OF LICENSEE (1) through (4) remain the same.

(5) All applicable boiler operating certificates and boiler operating engineer's licenses must be conspicuously displayed in the boiler room. In lieu of posting in the boiler room, appropriate signage may be provided, establishing the location where the documents may be examined.

(6) remains the same.

(7) When an ~~accident~~ incident occurs which renders a boiler inoperative, the licensee shall notify the department as soon as it is practical.

AUTH: 50-74-101, MCA

IMP: 50-74-106, 50-74-210, 50-74-214, MCA

REASON: The department is amending this rule to use the broader term of "incident" and require department involvement in more instances where a boiler is rendered inoperative than just accidents.

24.122.505 APPLICATION FOR LICENSURE (1) Any person required to obtain a boiler operating engineer's license shall make application to the department on form(s) and in a manner prescribed by the department.

(2) remains the same.

(a) a completed ~~and signed~~ application;

(b) ~~proof~~ applicant's birth date and declaration that the applicant is 18 years of age or older;

(c) through (3) remain the same.

(a) proof the applicant has successfully completed department-approved training course(s) specific to the class of boiler license sought; and

(b) verification, acceptable to the department, from a boiler operating engineer with a license at least equal to the class of license sought by the applicant, that the applicant has worked with the type of boiler for which the license is sought under the engineer's supervision for a minimum of 40 hours, and that the applicant is competent to operate the boiler of the class for which the license is being sought.

(4) remains the same.

AUTH: 50-74-101, MCA

IMP: 50-74-302, 50-74-303, 50-74-304, 50-74-305, 50-74-307, 50-74-308, MCA

REASON: The department is amending (1) and (2) to no longer require a signed application and documentation to prove an applicant's age. The shift to require an applicant's birth date and declaration will further facilitate the department's movement to process license applications exclusively online.

24.142.301 DEFINITIONS For the purposes of this chapter, the following definitions apply:

(1) ~~"Alteration" means a change of original design or operation through modernization, replacement of components or assemblies, or upgrade to existing equipment.~~

(2) and (3) remain the same, but are renumbered (1) and (2).

(4) ~~"Apprentice" means an individual who is working with and receiving training from an elevator mechanic or limited mechanic licensed under this chapter and who is registered by an appropriate governmental unit.~~

(5) (3) ~~"Conveyance" means and is synonymous with "elevator" and includes, but is not limited to:~~ the equipment set forth at 50-60-704(1), MCA.

(a) ~~escalators;~~

(b) ~~inclined elevators;~~

(c) ~~dumbwaiters;~~

- ~~(d) platform hoists;~~
- ~~(e) material lifts;~~
- ~~(f) moving walks;~~
- ~~(g) platform or wheelchair lifts; and~~
- ~~(h) chair lifts.~~

~~(4) "Conveyance work" means the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of the equipment set forth at 50-60-704(1), MCA. Further definitions of these activities are located in the ASME codes adopted by reference at ARM 24.301.602.~~

~~(6) "Electrical equipment" means any device or group of components that are connected to a source of electrical power. Such devices include, but are not limited to:~~

- ~~(a) electro-mechanical switches;~~
- ~~(b) controllers;~~
- ~~(c) motors;~~
- ~~(d) car and hall fixtures;~~
- ~~(e) lighting fixtures; or~~
- ~~(f) any other component that has exposed electrical parts or connections, either by design or when protective covers are removed.~~

~~(7) remains the same, but is renumbered (5).~~

~~(8) "Equipment testing" means safety tests required by the adopted safety standard performance of properly licensed elevator inspectors.~~

~~(9) remains the same, but is renumbered (6).~~

~~(10) "Interactive testing and maintenance" means activity which requires human interaction with the technical components of controllers and machinery. Interactive testing includes, but is not limited to:~~

- ~~(a) car and counterweight safety tests;~~
- ~~(b) pressure relief tests;~~
- ~~(c) buffer tests;~~
- ~~(d) brake tests;~~
- ~~(e) unintended car movement tests; and~~
- ~~(f) ascending car overspeed tests.~~

~~(11) "Limited elevator contractor" means any person, firm, partnership, company, or entity that is engaged in the business of installing, altering, servicing, replacing or maintaining residential elevators or other conveyances in private residences.~~

~~(12) "Limited mechanic" means any person who is engaged in the installation, alteration, servicing, replacing, or maintaining of residential elevators, platform lifts, stairway chairlifts, and dumbwaiters in private residences.~~

~~(13) "Lockout" means the placement of a locking device on an energy isolating device, in accordance with an established procedure, to ensure that the energy isolating device and the equipment being controlled by it cannot be operated until the lockout device is removed.~~

~~(14) "Maintenance" means the renewal of operating parts, cleaning, lubricating and adjusting existing elevator equipment to ensure proper and safe operation as required by code. The term includes, but is not limited to:~~

- ~~(a) cleaning and lubricating equipment;~~

~~(b) relamping and repairing car lighting fixtures; and~~

~~(c) regular monitoring of hydraulic oil levels.~~

~~(15) "NAESA" means the National Association of Elevator Safety Authorities.~~

~~(16) "Operational testing" means, but is not limited to, those activities which require measurement or observation, but which does not require any form of conveyance disassembly. These activities include, but are not limited to:~~

~~(a) fire service tests;~~

~~(b) step/skirt index tests;~~

~~(c) starting and stopping of equipment through normal means; or~~

~~(d) smoke and heat detectors tests.~~

~~(17) "Repair" means the restoration of an elevator to its original intended design, but does not include changing its operation or intended use.~~

~~(18) "Residential elevator" means a powered or passenger conveyance which is installed in a private residence where the access to or control of the conveyance is restricted from public access.~~

~~(19) and (20) remain the same, but are renumbered (7) and (8).~~

~~(21) "Tagout" means the temporary placement of a printed notice on an energy isolating device, in accordance with an established procedure, to indicate that the energy isolating device and the equipment it controls may not be operated until the printed notice is removed by the person who attached it to the isolating device.~~

AUTH: 37-73-102, ~~50-60-203~~, 50-60-705, MCA

IMP: 37-73-102, 37-73-201, 37-73-202, 37-73-203, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 50-60-704, MCA

REASON: The department determined it is reasonably necessary to delete definitions in (1), (4), (11), (12), (14), and (17), as they are already defined either in ASME or the Montana Code Annotated. This amendment will ensure against any unintended consequences should the terms be defined differently, and allow the maintenance of one definitive source for such definitions. These definitions unnecessarily repeat the statute defining the scope of practice of an elevator contractor and limited elevator mechanic.

The department is deleting erroneous definitions from (6) and (8), because "electrical equipment" and "equipment testing" do not appear in these rules or in Title 37, chapter 73, or Title 50, chapter 60, part 7, MCA.

The department is deleting the definitions of "interactive testing and maintenance" and "operational testing" from (10) and (16), and relocating the concepts to ARM 24.142.302 for clarity and to provide context for the definitions. The department concluded that these two definitions were ambiguous and did not adequately delineate what conveyance maintenance or repair does not require a license. Following amendment, these rules will draw a distinction and limit the type of maintenance and repair that is not addressed by the ASME code. Any requirement set forth in the code must be performed only by a licensed elevator mechanic or limited elevator mechanic.

The department determined that including "residential elevators" in the types of conveyances a mechanic may service exceeds the statutory authority of 37-73-

203(5), MCA, and is deleting (12). All conveyance work on an elevator in a private residence must be performed by an elevator contractor and elevator mechanic.

It is reasonably necessary to strike definitions of "lockout" and "tagout" from (13) and (21) and place them more appropriately with the elevator safety program rules in Title 24, chapter 301, MCA, to be located with specific procedural requirements associated with performing such actions in New Rule II.

The department is deleting (18) because "residential elevator" is used in association with the rules defining "limited" contractors and mechanics that improperly broadened their scope of practice. All other references to the term "residential elevator" are deleted, because for purposes of licensing rules of the subchapter, the location of the elevator is irrelevant, in contrast to it being relevant for determining whether a permit under Title 50, chapter 60 part 7, MCA, is required. An elevator in a private residence is exempt from permit and term "residential elevator" is misleading.

24.142.302 EXCEPTIONS SCOPE OF PRACTICE (1) Elevator mechanic licenses ~~issued by the department~~ are not required for individuals who do not require access to the pit, hoistway, or top of the car to ~~install~~ perform limited maintenance inside the car, which does not impact code compliance issues to include:

(a) through (e) remain the same.

(2) ~~Elevator mechanic licenses are not required for operational testing and maintenance work that is performed on conveyances when the appropriate lockout and tagout procedures have been performed by the person doing that work.~~ Individuals who perform operational testing after the person doing the test has performed a lock-out and tag-out, and as long as the testing does not impact code compliance issues or require any form of conveyance disassembly. Such testing may include, but is not limited to:

(a) ~~Except where allowed by law, interactive testing and maintenance checks may only be performed by licensed elevator personnel.~~ fire service tests;

(b) step/skirt index tests;

(c) starting and stopping of equipment through normal means; or

(d) smoke and heat detectors tests.

~~(3) Elevator contractor licenses issued by the department are not required for:~~

~~(a) an owner or employee of the owner performing only operational testing and maintenance on conveyances; or~~

~~(b) a public agency that employs licensed elevator mechanics to perform maintenance.~~

~~(4) (3) The construction or modification of hoistway shaft enclosure or machine room enclosure that does not involve alteration, repair, or maintenance of an elevator does not require an elevator contractor's license. However, the ~~alteration to~~ construction or modification of these structures must comply with all other applicable sections of the currently adopted building regulations.~~

~~(5) (4) A licensed elevator contractor may use a helper to assist a licensed elevator mechanic or limited mechanic during an installation to do conveyance work. Assistance does not include performing any function that requires knowledge, skills, or abilities of an elevator mechanic or limited mechanic.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: ~~37-1-104~~, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, MCA

REASON: It is reasonably necessary to amend (1) and add qualifying language regarding issues that affect code compliance to further differentiate between activities requiring elevator mechanic licensure and those that do not.

The department is amending (2) to incorporate the definition of "operational testing" previously set forth in ARM 24.142.301 and provisions being deleted from (3)(a) to provide better context in applying this licensure exception. The department is deleting (3)(b) after determining that there is no statutory support for this exemption and only an elevator contractor has the statutory authority to obtain a permit. Under 37-73-101, MCA, an "elevator contractor" means any person intending to engage in the business of installing, altering, or repairing elevators, escalators, dumbwaiters, or other equipment subject to the provisions of Title 50, chapter 60, part 7, MCA. Additionally, it is the contractor, rather than the mechanic, upon whom the obligation to maintain insurance lies.

To align with amendments proposed to ARM 24.301.602, the department is adding the term "shaft" to (3) to more clearly distinguish between the working parts of the hoistway, which are covered by the elevator code, and the space within the building that is covered by building codes.

The department is amending (4) to clarify that since "installation" may reasonably be construed to refer to "construction," it would appear that if the "helper" category is appropriate in one facet of conveyance work, it is appropriate in all.

24.142.402 FEE SCHEDULE (1) remains the same.

(2) Application for license by examination (applies to all categories and includes original license fee)	\$ <del>150</del> <u>200</u>
(3) Contractor - original license fee	<del>150</del> <u>600</u>
(4) <del>Biennial</del> <u>Annual</u> renewal fee for all categories of licensure, <u>except contractor</u>	400 <u>150</u>
(5) <u>Annual renewal fee for contractor license</u>	<u>600</u>
<del>(5)</del> (6) Application for license by endorsement or reciprocity (includes original license fee)	400 <u>150</u>
(6) through (8) remain the same, but are renumbered (7) through (9).	
<del>(9)</del> (10) Continuing education course curriculum approval	<del>75</del> <u>200</u>
(10) remains the same, but is renumbered (11).	

AUTH: 37-1-101, 37-73-102, MCA

IMP: 17-2-302, 17-2-303, 37-1-101, 37-1-134, 37-73-102, 37-73-201, 37-73-204, 37-73-208, 37-73-212, 37-73-216, 37-73-221, MCA

REASON: The department determined it is reasonably necessary to increase initial licensure and renewal fees to address a historical shortfall between the fees and the costs associated with those services. The program has been operating at a loss for multiple years in anticipation of additional licensees, but the program numbers have

failed to grow and have actually decreased. The department has never seen the anticipated number of licensees initially reported when the 2005 Legislature heard testimony from stakeholders on this licensing program. It is necessary to increase the fees as proposed to align fees with the completed cost vs. revenue analysis, and to meet the statutory requirement that fees be commensurate with costs.

The department determined it is reasonably necessary to separate the annual contractor renewal fee from all other renewal categories now because the program has been in existence long enough to realize that the contractor's renewal generates more expense to track insurance requirements and maintain the continuity of having a licensed mechanic associated with each contractor. Additionally, separating out this category will ensure that no other license type has to share the burden of the increased expenses associated with the contractor license.

It is necessary to increase the CE course curriculum approval fee to meet the actual costs of reviewing and approving the applications. Noting that the review process often takes longer to complete than originally anticipated, due in part to incomplete or noncompliant information, the department is increasing these fees to cover the actual costs of the bureau chief's review of these complex applications.

The department estimates that the proposed fee changes will affect 107 licensees and new applicants and result in approximately \$17, 050 in additional annual revenue.

24.142.404 LICENSEE RESPONSIBILITIES (1) Licensed elevator mechanics, limited mechanics, elevator contractors, limited elevator contractors, ~~or~~ and elevator inspectors shall have their licenses available on job sites at all times when employed in these capacities. Elevator mechanic or limited mechanic apprentices shall have their registration card, issued by the department, on their persons at all times when so employed. Failure to comply with this provision may result in disciplinary action against the apprentice's supervising licensee. A licensed elevator mechanic, limited mechanic, elevator contractor, limited elevator contractor, elevator inspector, elevator mechanic apprentice, or limited mechanic apprentice who does not have the required proof of licensure or apprenticeship registration while working in one of those capacities is subject to the issuance of a licensing citation in accordance with As provided by 37-73-225, MCA, a licensed elevator mechanic and a limited elevator mechanic are subject to a fine for failure to produce proof of licensure upon request.

~~(2) A licensed limited mechanic shall:~~

~~(a) perform work only in the employment of a licensed elevator contractor;~~

and

~~(b) perform work only on residential elevator construction.~~

~~(3) (2) A~~ All licensed elevator mechanic mechanics and limited licensed elevator mechanics shall perform conveyance work only in the employment of a licensed elevator contractor or limited licensed elevator contractor. An elevator mechanic who is a sole proprietor or individual engaging in the business of conveyance work must also be licensed as an elevator contractor.

~~(4) (3)~~ A licensed elevator contractor or limited elevator contractor shall not allow any person to perform elevator or other conveyance installation or repair work, unless the person is:



(a) through (c) remain the same.

~~(5)~~ (4) Elevator contractors are responsible for obtaining any permit required by the state of Montana or a certified local building code enforcement authority relating to ~~elevator equipment~~ conveyance work and are responsible for ensuring that work performed complies with the permitting requirements.

~~(6)~~ (5) Elevator contractors, limited elevator contractors, elevator mechanics, or limited mechanics may not allow their ~~license~~ licenses to be used by other individuals, firms, corporations, or businesses for the purpose of obtaining ~~elevator conveyance~~ permits or for performing conveyance work.

~~(7) Elevator contractors may not erect, construct, install or alter an elevator, dumbwaiter, escalator, or other equipment subject to the provisions of Title 50, chapter 60, MCA, unless they have first obtained a permit to do so from the department.~~

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

~~(9) All licensees are responsible for obtaining continuing education training as required by ARM 24.142.2102.~~

~~(10) Any violation of these licensing responsibilities will be deemed "unprofessional conduct" in addition to conduct described in 37-1-410, MCA and are subject to sanctions as provided by 37-1-406, MCA.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-1-406, 37-1-410, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, ~~37-73-220~~, 37-73-225, MCA

**REASON:** The department is amending (1) to comply with 37-73-225, MCA, which provides for citation consequences only to "a person doing work at a job site that requires an elevator mechanic's license." The current rule incorrectly applies citation consequences to license holders other than a mechanic, in excess of statutory authority. Other amendments clarify the distinction between department jurisdiction over licensees, but not apprentices.

The department is deleting (2) as it is not necessary to restate the scope of practice stated in law and to avoid the potential to copy the statutory language into rule and deviate from the statutory language. This is the case in current (2)(b), which purports to authorize limited elevator mechanics to work on "residential elevators" beyond the scope of practice as stated in the statute, which actually limits them to work only on stairway chairlifts, platform lifts, and dumbwaiters.

Amendments to new (2) underscore the principle of the codependency between contractor and mechanic licenses, and further clarify that the principle applies to both full and limited license categories.

The department is deleting (7) as this provision is adequately provided for through proposed amendments to ARM 24.142.2401 and 24.301.607.

Section (9) is being deleted as it contains an incorrect reference to ARM 24.142.2102 regarding sponsors, and because the provisions are already addressed in ARM 24.142.2103 and 24.142.2401.

The department is deleting (10) to avoid confusion among licensees. The department concluded that it is preferable to address these grounds for

unprofessional conduct at ARM 24.142.2401, rather than to narrowly imply that the responsibilities in this rule are the only grounds for unprofessional conduct.

24.142.502 ELEVATOR MECHANIC AND LIMITED MECHANIC LICENSURE QUALIFICATIONS (1) remains the same.

~~(a) passed a written examination or certification approved by the department successfully completed a state-approved apprenticeship or other education program that meets requirements established by department rule; or~~

~~(b) performed has three years verifiable conveyance work of experience verified by current or previous employers and, except as provided in (2), passed a written examination administered by the department.~~

(2) Elevator mechanic applicants who can under oath provide verifiable proof of employment as an elevator mechanic for at least three years prior to October 1, 2005, and who possess the requisite experience for licensure, may be licensed without examination upon payment of the application fee.

(3) For the purpose of meeting the experience option requirement for licensure as an elevator mechanic, one year equals at least 1500 hours as verified by current or previous employers. The department may, for good cause, allow a substitute means of verification of the three-year experience requirement as determined appropriate in the department's sole discretion, such as employment, payroll, or tax records.

~~(2) (4)~~ An applicant for a limited mechanic's license shall furnish evidence satisfactory to the department that the applicant has:

~~(a) passed a written examination or certification approved administered by the department; or~~

~~(b) one year of verifiable work experience in performing residential conveyance work.~~

AUTH: 37-73-102, 37-73-203, ~~50-60-203~~, MCA

IMP: ~~37-1-104~~, 37-73-102, 37-73-201, 37-73-203, 37-73-204, ~~50-60-203~~, MCA

REASON: The department determined it is reasonably necessary to amend this rule to correctly reflect the statutory qualifications for elevator mechanic and limited mechanic licensure. Specifically, it is necessary to delete (4)(b), the one year residential conveyance experience requirement for limited mechanics, as this exceeds statutory authority. Section (2) is relocated here from ARM 24.142.503, as it is more logically placed with licensure qualifications. New (3) clarifies for applicants that a year means at least 1500 hours and provides for an alternative means of experience verification for the rare times when an employer cannot verify experience.

24.142.503 ELEVATOR MECHANIC AND LIMITED MECHANIC APPLICATIONS (1) An applicant shall have one year from the date of department approval to take the examination for which the application was approved. If the examination is not taken within that one-year period, the applicant will be required to

submit a new application, provide written verification of experience, and pay the applicable fees.

(2) All applications shall be approved or disapproved on a case-by-case basis, as the department may deem proper, according to the following criteria:

(a) through (d) remain the same.

~~(3) Elevator mechanic applicants who can, under oath, provide verifiable proof of employment as an elevator mechanic for at least three years prior to October 1, 2005, and who also possess the requisite experience for licensure may be licensed without examination upon payment of the application fee.~~

AUTH: ~~37-1-105, 37-73-102, 50-60-203, MCA~~

IMP: ~~37-1-105, 37-73-102, 37-73-201, 37-73-203, 37-73-204, 37-73-221,~~  
MCA

REASON: The department is relocating (3) to ARM 24.142.502 as it is more appropriately located with the licensure requirements.

24.142.504 TEMPORARY PRACTICE PERMIT ~~(1) In the event of an emergency or disaster, as defined in 10-3-103, MCA, the department may issue a temporary practice permit for an elevator mechanic or limited elevator mechanic. A temporary practice permit will not be issued until the department:~~

~~(a) verifies information provided by a licensed elevator contractor that the contractors' employee, who is the applicant, may be qualified to perform elevator mechanic work without direct supervision; and~~

~~(b) determines that the training, education, and/or experience of the applicant seeking temporary practice permits is sufficient to allow that person to perform unsupervised elevator mechanic work without creating a risk to public health, safety, and well-being.~~

~~(2) Documentation of the training, education, and/or experience required in (1) for a temporary practice permit must include the following:~~

~~(a) a sworn affidavit from a licensed contractor stating an employee/applicant seeking a temporary practice permit has sufficient elevator installation experience to perform specific types of elevator work without supervision by a licensed mechanic;~~

~~(b) certified submission of relevant training or coursework successfully completed by the applicant; and~~

~~(c) in the case of an apprentice seeking a temporary practice permit, documentation from a state apprenticeship and training bureau or program that the apprentice has completed no less than 70% of the apprentice's required term and is completely current with related instruction.~~

~~(3) The department will verify the information described in (2) as it deems necessary to determine if acceptable standards of public health, safety, and well-being can be maintained by issuing temporary permits to specific applicants. Indicators used to evaluate acceptable levels of competency include, but are not limited to:~~

~~(a) satisfactory completion of relevant course work;~~

~~(b) amount of relevant on the job training;~~

~~(c) relevant military training and experience;~~

~~(d) relevant on the job training and experience from related trades; and  
(e) trade school certificates.~~

~~(4) A temporary practice permit issued pursuant to (1) is valid for 30 days.~~

~~(a) Subsequent temporary practice permits will only be issued if the emergency or disaster condition still exists.~~

~~(5) In the event the department determines that a shortage of licensed elevator mechanics or limited mechanics exists to the extent that, if left uncorrected, it could have a materially adverse impact on public health, safety, and well-being, the department may issue a temporary practice permit for an elevator mechanic or limited mechanic.~~

~~(a) A licensed elevator contractor may submit written notification to the department that a shortage of licensed elevator mechanics or limited mechanics exists. The elevator contractor must be in good standing with the department and have no active complaints against the licenses of the contractor or the contractor's employees before the contractor is eligible to declare a shortage of elevator mechanics or limited mechanics for the contractor's business. Sufficient proof of a bona fide shortage of licensed elevator mechanics or limited mechanics must accompany the written notification and must include:~~

~~(i) a detailed description of the nature of the claimed shortage which particularly explains why the shortage was unforeseeable;~~

~~(ii) a description of all the projects affected by the claimed shortage, including the location of each project; and~~

~~(iii) evidence of the need for immediate action by an elevator contractor, especially as it may relate to healthcare issues or accessibility for disabled persons.~~

~~(6) Upon consideration and subsequent finding by the department that a contractor's claimed shortage of elevator mechanics or limited mechanics is bona fide to the extent that, if left uncorrected, an adverse material impact on public health, safety, and well-being will result, the department will issue temporary practice permits as it deems prudent and appropriate to temporarily remedy the mechanic shortage.~~

~~(7) A temporary practice permit issued pursuant to (5) is valid for 30 days and only at the locations noted in (5)(a)(ii).~~

~~(a) Subsequent temporary practice permits will be issued only if continued monitoring by the department indicates a bona fide elevator mechanic or limited mechanic shortage continues to exist.~~

~~(8) For good cause and upon notice, the department may revoke any temporary practice permit as it believes is prudent and necessary to best serve the interests of ensuring or maintaining public health, safety, and well-being.~~

~~(1) The department may issue two types of temporary licenses:~~

~~(a) to elevator inspectors for a six-month temporary license, pending certification while under supervision of a licensed, certified inspector; and~~

~~(b) to elevator mechanics in the case of an emergency or disaster as provided at 37-73-216, MCA.~~

~~(2) All temporary practice permits are subject to revocation under contested case proceedings in 37-1-403, MCA.~~

AUTH: 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-216, ~~50-60-203~~, MCA

REASON: Section 37-73-216, MCA, authorizes elevator contractors to certify to the state the qualifications of their employees with acceptable education and experience to perform elevator repair work without direct supervision, but under the contractor's legal responsibility, during a declared emergency or disaster. The department determined it is reasonable and necessary to amend this rule to correct several instances of statutory conflict. The current rule conflicts with the statute by requiring the state, rather than the employer, to certify the qualifications of a temporary mechanic, and as a result, assuming the liability that the law has placed external to the state. Additional conflicts include the addition of time restraints that the Legislature intended to avoid during emergencies, creating a standard by which the department measures the need to issue permits, and allowing renewal in 30-day increments.

The department also concluded that amending and simplifying this rule is warranted since 37-73-216, MCA, the implemented statute, contains sufficient direction and procedure that makes it unnecessary to elaborate by rule.

24.142.506 ELEVATOR INSPECTOR QUALIFICATIONS --TRANSITION PERIOD (1) ~~Applicants~~ Unless they qualify for a temporary license under 37-73-208, MCA, applicants for elevator inspectors licenses shall provide evidence satisfactory to the department that they possess certification as such from one or more of the following entities:

(a) through (d) remain the same.

~~(2) Inspectors currently approved to inspect elevators in Montana will have six months from the date this rule becomes effective to become certified in accordance with this rule.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-73-102, 37-73-201, 37-73-208, MCA

REASON: The department is amending (1) to clarify the six-month temporary licensure for noncertified inspectors working under certified personnel. The "transition period," or grandfather clause in (2) is no longer necessary, since the rules have now been in effect longer than the six-month period stated.

24.142.507 ELEVATOR CONTRACTOR APPLICATIONS (1) and (a) remain the same.

(b) the appropriate fee; ~~and~~

(c) ~~proof of the following:~~

(i) ~~a~~ general contractor registration to engage in the business of installing, repairing, or altering powered conveyances;

(ii) ~~(d)~~ a currently dated, certified copy of a liability insurance policy issued to the business name listed on the application, which includes the insurance policy number, and which complies with the requirements of 50-60-716, MCA; ~~and~~

(iii) ~~(e)~~ a current certificate of existence or a current certificate of fact, issued by the Montana Secretary of State's office; ~~and~~

(f) a current list of all licensed elevator mechanics or inspectors who will be responsible for all work performed under the contractor's license, and any permit issued to the contractor, which shall be updated at license renewal.

~~(2) The department shall issue a limited elevator contractor license to an applicant who:~~

~~(a) submits the documentation required in (1); and~~

~~(b) employs a licensed limited mechanic, named on a form provided by the department, as the mechanic responsible for code compliance on all work performed under that contractor license.~~

~~(3) The department shall issue an unlimited elevator contractor license to an applicant who:~~

~~(a) submits the required documentation listed in (1); and~~

~~(b) employs a licensed elevator mechanic, named on a form prescribed by the department, as the elevator mechanic responsible for code compliance on all work performed under that contractor license.~~

~~(4) (2) An individual owner or sole proprietor of an unlimited elevator contracting business not licensed as an elevator mechanic or inspector shall employ an one or more licensed elevator mechanic mechanics or inspectors to perform all conveyance work done under that contractor's license and conveyance permits issued to that contractor.~~ No holder of an elevator mechanic's license can be named as the responsible elevator mechanic for more than one elevator contractor at any given time.

(5) through (7) remain the same, but are renumbered (3) through (5).

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-212, ~~50-60-203~~, 50-60-716,  
MCA

REASON: The department is amending this rule for clarity, accuracy, simplicity, better organization, and ease of use in setting forth the qualifications and current application procedures for elevator contractor licensure. Renumbering following amendment is done to comply with ARM formatting requirements.

The department is amending (2) to address confusion and clarify the obligations for work performed and permits issued under a contractor's license. This is necessary to ensure that conveyance work is completed by licensed personnel, regardless of whether under an unlimited or limited contractor.

24.142.509 EXAMINATIONS (1) through (4) remain the same.

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-73-102, 37-73-201, 37-73-204, MCA

24.142.2101 RENEWALS (1) ~~Renewal dates are biennial. The first two-year renewal cycle will commence on April 1, 2008.~~ Renewal is the responsibility of the licensee and although the department may send reminder notices to the last known address of provided by the licensee, failure to receive such notices does not relieve licensees of their responsibility of renewal.

(2) remains the same.

~~(3) An audit of continuing education hours will be conducted by the department for each renewal cycle. Failure to obtain the requisite continuing education hours is grounds for license suspension or revocation.~~

AUTH: 37-73-102, ~~50-60-203~~, MCA

IMP: 37-1-403, 37-73-220, MCA

REASON: The department is amending (1) to align with the shift to annual renewals and to clarify the licensee obligation to provide current address information to the department. The department is moving (3) within this notice to be situated with similar continuing education provisions at ARM 24.142.2103.

24.142.2102 CONTINUING EDUCATION SPONSORS AND COURSES

(1) through (3)(a) remain the same.

(b) All course approvals expire ~~May~~ July 1st of each ~~renewal~~ year.

(c) through (5) remain the same.

(6) Course sponsors must ~~submit~~ maintain a list of names and license numbers of the attendees to the department ~~as prescribed by the department no later than 30 days after the date of course completion.~~

AUTH: 37-73-102, MCA

IMP: 37-73-102, 37-73-220, MCA

REASON: The department is amending (3) to align course approvals with the shift to annual renewals and enable the department to better monitor programs on an annual basis. The department is amending (6) to no longer require that course sponsors submit attendee information, since it is the licensee's responsibility to maintain this information.

24.142.2103 CONTINUING EDUCATION CREDITS REQUIRED (1) ~~In order to renew any class of~~ Each holder of an elevator mechanic license, a limited elevator mechanic license, or an elevator inspector license, ~~the licensee must have completed~~ complete at least eight hours of approved continuing education during the ~~two-year license period~~ immediately preceding the annual renewal.

(2) remains the same.

(3) The department may conduct a random audit of 15 percent of all licensees annually for compliance with the continuing education requirement. Failure to obtain the requisite continuing education hours is grounds for license suspension or revocation.

AUTH: 37-73-102, ~~37-73-220~~, MCA

IMP: 37-1-131, 37-73-102, 37-73-220, MCA

REASON: The department is amending (1) to align with the shift to annual renewals and clarify the licensees that have continuing education (CE) requirements. Further,

it is necessary to amend (1) to comply with 37-1-131, MCA, and require licensees to affirm CE completion at renewal, but not require submission of CE proof to renew.

24.142.2401 LICENSE DISCIPLINE ~~(1) The department will follow all statutes, rules, and policies relating to discipline of licensees under this chapter and 37-1-410, MCA.~~

~~(2) (1)~~ In addition to the activities conduct set forth in 37-1-410, MCA, the following ~~activities are also deemed by the department to be~~ conduct is also defined as unprofessional conduct:

(a) ~~uncorrected failure to correct~~ violations of the Montana state elevator code as adopted cited by the Department of Labor and Industry's Building Codes Bureau department;

(b) failing failure to comply with all provisions of state law relating to workers' compensation insurance, unemployment insurance, and independent contracting; and

(c) failure to comply with continuing education requirements set forth in ARM 24.142.2103-;

(d) failure to comply with the permitting provisions set forth in 50-70-709, MCA, and ARM 24.301.606;

(e) failure to request an inspection as provided in ARM 24.301.606;

(f) failure to provide proof of licensure upon request as prescribed in 37-73-225, MCA;

(g) failure of a licensed elevator inspector to file condition reports as prescribed in ARM 24.301.623;

(h) failure to notify the department of a material policy alteration or policy cancellation as required by 50-60-716, MCA; and

(i) failure to comply with any law and rule governing elevator licensing program or the elevator code.

~~(3) (2) Upon findings~~ The provisions of Title 37, chapter 1, part 4, MCA, govern the prosecution of unprofessional conduct as defined in (1) and determined in accordance with the Montana Administrative Procedure Act, the department may impose sanctions including, but not limited to, those allowed by or listed in 37-1-406, MCA.

AUTH: 37-73-102, MCA

IMP: 37-1-402, 37-1-403, 37-1-404, 37-1-405, 37-1-406, 37-1-409, 37-1-410, 37-73-102, 37-73-225, 37-73-226, 37-73-227, MCA

REASON: The department is amending this rule to specify additional acts of unprofessional conduct to ensure that licensees are provided clear notice of the consequences of failing to follow requirements to obtain permits and request inspections. Additional amendments to this rule eliminate unnecessary provisions and provide clear reference to the appropriate statutes governing the prosecution of unprofessional conduct by licensees.

24.301.401 INCORPORATION BY REFERENCE OF NATIONAL ELECTRICAL CODE (1) The department, by and through the Building Codes



Bureau, adopts and incorporates by reference the National Fire Protection Association Standard NFPA 70, National Electrical Code, ~~2008~~ 2011 edition referred to as the National Electrical Code, unless another edition date is specifically stated. The National Electrical Code is a nationally recognized model code setting forth minimum standards and requirements for electrical installations. A copy of the National Electrical Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, Helena, MT 59620-0517 or the National Fire Protection Association, One Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

AUTH: 50-60-203, 50-60-603, MCA

IMP: 50-60-201, 50-60-203, 50-60-601, 50-60-603, MCA

REASON: The department has reviewed the revisions made to the National Electrical Code most recently reflected in its 2011 edition as compared to the 2008 edition, and is amending this rule to adopt and implement those changes as appropriate for minimum standards and requirements for electrical installations.

24.301.602 INCORPORATION BY REFERENCE OF ELEVATOR CODE

~~(1) The Department of Labor and Industry, referred to as Subject to the provisions of Title 50, chapter 60, part 7, MCA, the department, adopts and incorporates by reference the following conveyance codes promulgated by the American Society of Mechanical Engineers (ASME):~~

~~(a) through (d)(i) remain the same.~~

~~(2) The purpose of the elevator code is to provide safety standards for the design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of permanently installed hoisting and lowering mechanisms.~~

~~(a) Devices covered by the elevator code include but are not limited to:~~

~~(i) elevators;~~

~~(ii) platform lifts;~~

~~(iii) stairway chair lifts;~~

~~(iv) dumbwaiters;~~

~~(v) escalators;~~

~~(vi) automated people movers;~~

~~(vii) inclined lifts; and~~

~~(viii) moving walks and their hoistway.~~

~~(b) The elevator code does not apply to self-powered, mobile equipment including, but not limited to:~~

~~(i) material hoists and man lifts;~~

~~(ii) mobile scaffolds, towers, and platforms;~~

~~(iii) powered platforms and equipment for exterior and interior maintenance;~~

~~(iv) conveyors and related equipment;~~

~~(v) cranes, derricks, hoist, hooks, jacks, and slings;~~

~~(vi) industrial trucks;~~

~~(vii) portable equipment, except for portable escalators;~~

~~(viii) tiering or piling machines used to move materials to and from storage that are located and operated entirely within one story;~~

- ~~(ix) equipment for feeding or positioning materials at machine tools, printing presses, and similar locations;~~
- ~~(x) furnace hoists; and~~
- ~~(xi) railroad car lifts or dumps which are typically used on a temporary basis on construction sites.~~

~~(3)~~ (2) Inspection, code compliance, and enforcement of hoistway (shaft) standards ~~is~~ are the responsibility of the appropriate authority having jurisdiction for inspection and enforcement of the building code. A "hoistway shaft" is distinguished from a "hoistway" for the purposes of building code jurisdiction over the former, and elevator code jurisdiction over the latter.

~~(4)~~ (3) The codes, standard, and appendix referenced in (1), together with Title 50, chapter 60, part 7, MCA, and this subchapter, are collectively referred to as the "elevator code." A copy of the ~~elevator code~~ ASME codes and standards may be obtained from the American Society of Mechanical Engineers, 345 East 47th Street, New York, NY 10017 P.O. Box 2300, Fairfield, NJ 07007-2300, or www.asme.org.

AUTH: ~~50-60-203,~~ 50-60-705, 50-60-715, MCA

IMP: ~~50-60-204,~~ 50-60-704, 50-60-705, 50-60-715, MCA

**REASON:** The department is amending (1) to clarify that the ASME rules are subordinate to the enabling legislation and remove a redundant definition of the department, which is already defined in ARM 24.301.109.

It is reasonably necessary to delete (2), because it unnecessarily repeats 50-60-704, MCA, and instead refer to the ASME code in (1), and clarify that the statute controls where there are differences between the two.

The department is amending new (2) to distinguish between the part of a building (the "hoistway shaft") and a part of a conveyance ("hoistway") and applicable codes pertaining to each. New (3) clarifies that the definition of "elevator code" includes not only the ASME code and standards, but also applicable state law and rules, and that the three must be read and applied together.

24.301.606 PLAN REVIEW AND PERMIT FEE (1) An elevator contractor may not erect, construct, install, or alter ~~an elevator, dumbwaiter, escalator, or other equipment~~ any conveyance subject to the provisions of Title 50, chapter 60, MCA, unless the elevator contractor has first submitted plans, paid the fee, and obtained a permit from the department ~~and paid the requisite permit fee.~~

(2) The plan review and permit fee for new installations and alterations of ~~an elevator, escalator, moving walk and other conveyance covered within the scope of the elevator code and subject to the inspection requirements of Title 50, chapter 60, MCA,~~ a conveyance is:

- (a) valuation up to and including \$40,000 \$~~55~~ 200
- (b) valuation over \$40,000 ~~55,~~ 200

plus \$~~4~~ 3 for each \$1,000 or fraction thereof over \$40,000

~~(3) Plans, applications and fees for new units must be submitted to the department at least 30 days prior to commencement of construction and installation of the unit. Plan approval and issuance of permits must be obtained from the~~

~~department prior to the commencement of construction and installation. Whenever a new conveyance is proposed to be installed or alterations are proposed to an existing conveyance in a certified building jurisdiction, the elevator contractor must provide that jurisdiction with a copy of the plans submitted to the department.~~

~~(4) The permit holder must contact the department or a licensed elevator inspector for an inspection of a newly installed or altered conveyance a minimum of ten working days prior to the scheduled or anticipated date for placing the conveyance in use.~~

~~(a) Prior to calling for inspection of a newly installed or altered conveyance, the permit holder must ensure all aspects of the installation or alteration are complete and ready for inspection, including, but not limited to:~~

~~(i) the functioning of all conveyance components; and~~

~~(ii) completion of all related electrical, mechanical, fire alarm, fire suppression, and building construction work to the shaft, machine room, and related areas.~~

~~(b) If upon the requested arrival of department personnel, the conveyance is not ready for inspection, the permit holder will still be responsible for the inspection fee despite the inability to complete the inspection, and will also be charged for all subsequent inspections or reinspections.~~

~~(4) No elevator permit will be issued until a building permit is issued, unless it is determined by the department that a building permit is not required.~~

~~(5) Building code related drawings as required by 50-60-709, MCA, must also be submitted to certified cities, counties, and towns if an elevator is being installed within their building codes jurisdictions.~~

~~(6) Private residential elevators are only allowed in buildings that are not accessible to the general public or to other occupants of the building.~~

~~(7) (5) Permits will expire six months after issuance as provided by 50-60-709, MCA.~~

~~(8) (6) Permits In addition to the criteria provided at 50-60-709, MCA, a permit may be revoked and subject to an administrative hearing under 50-60-105, MCA, for cause including but not limited to:~~

~~(a) having a reasonable cause finding of unprofessional conduct, as defined in 37-1-402 and 37-1-410, MCA, which conduct materially against a licensed elevator contractor or mechanic that relates to work done under a lawfully issued the safety of the conveyance, subject to the permit; or~~

~~(b) not following the plans approved by the department; or~~

~~(c) (b) failure to obtain or maintain insurance on an installation as required in 50-60-716, MCA.~~

AUTH: ~~50-60-203, 50-60-705, 50-60-709, MCA~~

IMP: ~~50-60-204, 50-60-105, 50-60-709, 50-60-711, MCA~~

REASON: The department determined it is reasonably necessary to increase permitting and plan review fees in (2) to address a historical shortfall between these fees and the costs associated with those services. The department has seen an increase in the variety of machine types and in the complexity of permit applications and therefore is spending more time reviewing and issuing new permits for

conveyance devices. It is necessary to increase the fees as proposed to align fees with the costs vs. revenue analysis that has been done, and to meet the statutory requirement that fees be commensurate with costs. The department estimates that the proposed fee increases will affect approximately 125 new devices per year and result in \$16,625 in new annual permit fees.

The department is amending (3) because the department currently requires less than 30 days to review plans and issue a permit and may issue a permit within one or two working days. The admonition to obtain the permit before commencing work is clarified in amendments to (1).

Section (4) is deleted, since building permits are issued independently from elevator permits and there is no statutory authority for the department to withhold an elevator permit on this contingency, nor is there any apparent administrative or public benefit to do so. The provision on providing copies of plans to certified building jurisdictions is deleted from (5) and further clarified in (3).

The department is moving the substance of (6) under the new definition of "private residence" in New Rule I. The department is adding (4) to further clarify the process required by the permit holder to request the inspection, the standards required prior to requesting an inspection, and the consequences for being unprepared for the inspection, to address actual instances the department has experienced, and associated waste of resources.

It is reasonably necessary to amend (5) as the current rule misleadingly refers to only a portion of the applicable statute. Following amendment, the rule will refer to the statute to incorporate both the elapse of a six-month period and the ability of the department to specify a shorter expiration period.

The department is amending (6) to specify the statutory grounds for revocation, eliminate unnecessary duplication of statutory language, and clarify the administrative remedy for contesting a department decision to revoke. Further amendments clarify the department's jurisdiction over licensees committing unprofessional conduct, and impose a reasonable cause requirement as determined through a separate procedure to avoid relying on incomplete information or information that does not have an indicia of reliability. In (6)(b), the department is deleting "installation" as it further limits and qualifies the insurance obligation that is not present in the statute.

24.301.607 CERTIFICATE OF INSPECTION INSPECTIONS -  
CERTIFICATES - FEES ~~(1) The department shall inspect hoisting and lowering mechanisms equipped with a car or platform, which move between two or more landings, including but not limited to:~~

- ~~(a) elevators, platform lifts and stairway chair lifts;~~
- ~~(b) power driven stairways and walkways for carrying persons between landings, including but not limited to:
  - ~~(i) escalators; and~~
  - ~~(ii) moving walks;~~~~
- ~~(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to carrying only materials by its limited size or limited access to the car, including but not limited to:
  - ~~(i) dumbwaiters;~~~~

~~(ii) material lifts and dumbwaiters with automatic transfer devices; and  
(d) automatic guarded transit vehicles on guideways with an exclusive right-of-way including, but not limited to, automated people movers.~~

~~(2) Each installation shall be inspected at least once every 12 months, except as provided in ARM 24.301.609, and freight elevator inspections must be conducted at least every two years.~~

~~(3) If the inspection by the department reveals a unit complies with the requirements of the code and the inspection fee has been paid, a certificate of inspection will be issued.~~

~~(4) If the inspection by the department reveals a unit has minor deficiencies that do not cause imminent hazard to life and safety but that should be corrected before the next inspection, a conditional certificate may be issued after the certificate of inspection fee has been paid. Only one conditional certificate will be issued for each specified deficiency. Upon the next scheduled inspection, if the same deficiencies exist, the department will require those deficiencies be corrected before a certificate of inspection will be issued.~~

~~(5) New or upgraded elevators cannot be placed in operation prior to an inspection by the department and the issuance of a temporary certificate of inspection. Installers shall call the department for an inspection a minimum of 10 working days prior to the scheduled or anticipated date for placing the elevator in use. A temporary certificate may be withdrawn at any time, for cause, by the department.~~

(1) No conveyance may be operated prior to inspection by an authorized elevator inspector and issuance of a current certificate of inspection from the department.

(2) Except for registered freight elevators, which require inspection every two years, all other registered conveyances require inspection on an annual basis. The department may require more frequent intervals as part of a plan of correction.

(3) The department will schedule and conduct inspections and will issue a certificate of inspection upon:

(a) payment of the inspection and certificate fees; and

(b) a determination by either a private, licensed elevator inspector or a department inspector that the conveyance is in compliance with the elevator code.

(4) The department will charge the full inspection fee for mutually scheduled inspections in which department inspectors arrive to find the conveyance not yet ready for inspection.

(5) The department may require correction of deficiencies and reinspection, prior to the next annual inspection, as it determines in the interest of public safety.

(6) When a department inspection reveals a deficient condition, the department, within 24 hours, will issue a corrective notice providing the owner or lessee 14 days to correct the deficiencies. Failure by the owner or lessee to correct the deficiencies or to submit a plan of correction acceptable to the department within the time stated will result in the issuance of a formal notice and order to stop operation of the conveyance.

~~(6) (7) A duplicate certificate of inspection will be issued for a \$10 no fee.~~

(7) (8) The annual certificate of fee for each separate department inspection (initial, annual, biennial, accident, or reinspection) fee is:

- (a) when inspections are performed by the department:
  - (i) ~~for each elevator, escalator, and moving walk~~  
(also applies to follow-up inspections performed after a licensed inspector's inspection) \$100 140 per conveyance
  - (ii) ~~(b) for each lift (also applies to follow-up inspections done after certified inspector's inspection lifts~~ ~~70~~ 100 per conveyance
  - (b) ~~(c) when inspections are made by certified inspectors and no follow-up is required by the department: department processing fee for a condition report issued by licensed private inspector~~
    - (i) ~~for each elevator, escalator and moving walk~~ 10 per conveyance
    - (d) certificate of inspection fee 10 per conveyance

~~(8) When an inspection reveals an unsafe condition, the inspector shall immediately file with the owner and the department a full and true report of such inspection and such unsafe condition.~~

~~(a) If the department finds that the unsafe condition endangers human life, it shall cause the elevator, escalator, moving walk, or other conveyance to be posted with a notice, in a conspicuous place, stating that the conveyance is unsafe. The owner shall see to it that such notice is legibly maintained where placed by the department.~~

~~(b) The department shall also issue an order in writing to the owner requiring the repairs or alterations to be made to the conveyance, which is necessary to render it safe. The department may order the operation thereof discontinued until the repairs or alterations are made or the unsafe conditions are removed.~~

~~(c) Only the department may remove a posted notice of unsafe conditions when the department is satisfied that the unsafe conditions have been corrected.~~

~~(d) The certificate fee will be charged even though the unit is not certified for operation, and at such time as the deficiencies are corrected, a reinspection fee will be charged.~~

~~(9) It is unlawful to operate any elevator, escalator, moving walk, or other conveyance without a current certificate of inspection or authorization from the department. These certificates shall be issued upon payment of prescribed fees and the presentation of a valid inspection report indicating that the conveyance is safe and that the inspection was made within the previous six months. Certificates shall not be issued when the conveyance is posted as unsafe. Obtaining current certificates of inspection is the responsibility of the owners of the conveyance.~~

~~(10) (9) Elevator certificates An owner shall post in a conspicuous place in or on each conveyance, the current certificate of inspection, or signs indicating that a copy of the certificate is available upon request and where one can be obtained, must be posted in each elevator information on how to obtain a copy of it.~~

AUTH: 50-60-203, 50-60-705, 50-60-711, MCA

IMP: 50-60-103, 50-60-211, 50-60-705, 50-60-706, 50-60-711, 50-60-715,

MCA

REASON: The department is deleting (2) because it unnecessarily repeats 50-60-711, MCA, describing inspection intervals. Further, the department proposes to

repeal ARM 24.301.609 in this notice, as contradicts the requirement in the statute to conduct annual inspections.

It is reasonably necessary to delete (3) and add (2) through (6) to fully and specifically describe the process of requesting an inspection, the consequences of not passing the inspection, the issuance of certificates, and the standard required to be met before the certificate issues. The new sections clearly indicate relative responsibilities and duties of contractors, inspectors, owners, and lessees.

The department is deleting (4), because there exists no statutory authority to issue a "conditional certificate" when "minor deficiencies" exist. The statute only allows the department to issue a certificate when there is compliance with applicable building and elevator codes. Likewise, (5) is deleted as the department lacks the authority to issue a "temporary certificate of inspection." The certificate is documentation that an inspection has been completed and that the conveyance complies with the requirements of the applicable building code and Title 50, chapter 60, part 7, MCA. The department is relocating the ten-day notice requirement to ARM 24.301.606 in this notice.

The department is amending (7) to provide duplicate certificates of inspection for no charge, because customers now have direct access to the certificate records online, leaving no additional costs for producing or mailing multiple certificates. Given that few duplicate certificates are requested, the costs associated with issuing duplicates will be offset by other efficiencies elsewhere in these rule changes.

It is reasonably necessary to amend (8) to more succinctly set forth the different fees for different types of conveyances. The amendments further clarify the various types of inspections for which the department will charge, eliminating the ambiguity in the current rule about different charges for reinspections. The department determined that fees must be increased to accommodate staff increases to address new conveyances constructed in the state, and to comply with the statutory mandate to conduct annual inspections. In addition, the fee increases are necessary to accommodate higher costs for travel (gasoline, fleet maintenance, and lodging). The department estimates that these fee changes will affect approximately 3162 new and existing devices and result in \$135,850 additional annual revenue.

The department is deleting (8) and moving the inspection deficiency provisions to (6) and New Rule II to clarify the procedure for posting and deactivating a conveyance that the department has determined to be a threat to public safety. The department further determined it is incongruent to charge for a certificate when no certificate is issued. Following these amendments, the department will charge only when a certificate is issued and then assess a separate fee for each inspection, regardless of whether or not the inspection showed deficiencies.

The department is deleting (9) and incorporating its substance into the new text of this rule, with the exception of the reference to accepting inspections made within six months. The statute makes no such reference and the department's actual practice is to issue the certificates contemporaneously with the inspection.

It is reasonably necessary to amend (10) to clearly delineate the owner's responsibility to post certificates for conveyances.

24.301.610 ACCIDENTS (1) When a ~~permanently installed~~ conveyance is involved in an accident causing injury or death, an owner or lessee aware of such

~~accident must be reported~~ submit a written report to the department within 72 hours. The department ~~may then cause the site of the accident to be inspected, the cause of the accident to be determined~~ must inspect the conveyance involved in the accident, charge the appropriate fee, and, if necessary, require corrective action.

AUTH: ~~50-60-203, 50-60-705, MCA~~

IMP: ~~50-60-103, 50-60-201, 50-60-211, 50-60-705, 50-60-711, MCA~~

REASON: The department is amending this rule to delete "permanently installed" to ensure that conveyances under the department's jurisdiction are not qualified or limited beyond the parameters in statute at 50-60-704, MCA. Additional amendments clarify that the duty to report an accident lies with the owner or lessee of a conveyance, and that the department has a mandatory authority to inspect conveyances under its jurisdiction and order corrective action.

#### 24.301.623 INSPECTIONS BY LICENSED PRIVATE INSPECTORS

~~(1) The department shall accept inspections by licensed private elevator inspectors of permanently installed hoisting and lowering mechanisms equipped with a car or platform, which move between two or more landings, including but not limited to:~~

~~(a) elevators, platform lifts and stairway chair lifts;~~

~~(b) power driven stairways and walkways for carrying persons between landings, including but not limited to:~~

~~(i) escalators; and~~

~~(ii) moving walks;~~

~~(c) hoisting and lowering mechanisms equipped with a car, which serves two or more landings and is restricted to the carrying of material by its limited size or limited access to the car, including but not limited to:~~

~~(i) dumbwaiters;~~

~~(ii) material lifts and dumbwaiters with automatic transfer devices; and~~

~~(d) automatic guarded transit vehicles on guideways with an exclusive right-of-way including, but not limited to, automated people movers.~~

~~(2) Each installation must be inspected at least once every 12 months, except that freight elevator inspections must be conducted at least every two years.~~

~~(a) A detailed report of each unit inspected must be filed with the department within 14 working days after the inspection is completed on a form approved by the department. Such report must list all failures of the installation specific in reference to the code requirements of Chapter 30 of the International Building Code, and the state elevator code.~~

~~(b) A certificate of inspection must be issued by the department upon receipt of the report of the licensed elevator inspector that the unit is in an acceptable state of repair for receiving certification, and after the inspection fee has been paid to the department.~~

~~(c) Licensed private elevator inspectors shall attempt to secure compliance with the department's rules. If unsuccessful, inspectors shall so report to the department. If it then becomes necessary for the department to make an inspection, the fee for inspecting each permanently installed hoisting and lowering mechanism~~



will be charged to the owner as per other inspections made by the department, as provided in ARM 24.301.607 and 24.301.608.

~~(d) The department may inspect any installation, which has been or will also be inspected by a licensed private elevator inspector. Whenever the department inspection confirms that a licensed private elevator inspector's inspection report is substantially or materially incomplete, invalid, or otherwise unacceptable, the department may assess that licensed private elevator inspector the fee for inspection by the department, as provided in ARM 24.301.607 and 24.301.608.~~

~~(e) The owners of units inspected by licensed private elevator inspectors shall be charged \$10 by the department. This charge covers receiving and processing the condition report for each individual piece of equipment in a building and for issuing a certificate of inspection for that equipment if the licensed private elevator inspector doing the inspection certifies to the department that there are not any deficient conditions or that all deficient conditions noted in the condition report have been corrected and that a follow-up inspection by the department is not necessary.~~

~~(3) Whenever the department has reason to believe the conduct of a licensed private elevator inspector has been unprofessional, as provided in 37-1-410, MCA, the department will report that information to the Professional and Occupational Licensing Bureau for further investigation.~~

(1) When an owner or lessee of a conveyance engages a licensed private inspector to conduct an inspection of a conveyance, the inspector must complete a condition report in a manner prescribed to the department within three days of the inspection.

(2) Upon receipt of the \$10 fee for receiving and processing the condition report, and a \$10 certificate inspection fee, the department shall issue certificates of operation for all conveyances certified by the licensed private inspector to be in compliance with the elevator code and the currently adopted edition of the International Building Code as provided by ARM 24.301.131, or that deficient conditions in a past condition report have been corrected and no department inspection is necessary.

(3) The department may inspect any conveyance that has been the subject of a deficient condition report submitted by a licensed private inspector and charge the owner or lessee the department's inspection fee.

AUTH: 50-60-705, 50-60-711, MCA

IMP: ~~50-60-201, 50-60-211,~~ 50-60-705, 50-60-711, 50-60-715, MCA

**REASON:** The department determined it is reasonably necessary to amend and reorganize this rule to clearly and concisely set forth current processes and requirements for inspections by licensed private elevator inspectors. Several provisions are being incorporated in ARM 24.301.607, to be situated with similar provisions on inspections, certificates, and associated fees. In (1), the department is reducing the time period for filing a condition report from 14 days to three days. The department concluded there is no reason for such a lengthy period, since the reports will be submitted electronically.

It is reasonably necessary to establish fees in (2) that are commensurate with the costs of filing condition reports and issuing certificates of inspection. These \$10 fees are shown in ARM 24.301.607. The department is also replacing the specific reference to chapter 30 of the IBC for the current edition, as there are provisions beyond chapter 30 that are applicable to elevators.

The department is eliminating the requirement in (2)(d) for a finding of inspector wrongdoing before the department can charge for inspections. As set forth in (3), the department will charge for every inspection conducted, as there are expenses involved in every inspection. In amending this rule, the department eliminated several provisions of (2), after determining that there is no authority to charge inspectors, the proper method to address inspector unprofessional conduct is the disciplinary process by the Elevator Safety Program, and the proper party to charge for a reinspection due to the deficiency of a licensed private inspector is the owner or lessee certificate holder. Section (3) is deleted, as it unnecessarily repeats 37-1-402, MCA.

24.301.710 INCORPORATION BY REFERENCE OF BOILER AND PRESSURE VESSEL CODE (1) The Department of Labor and Industry, referred to as department in this and all subsequent rules, adopts and incorporates by reference the following sections of the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code, 2004 edition, referred to as Boiler and Pressure Vessel Code, unless another edition is specifically stated:

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

(2) ~~The Department of Labor and Industry~~ department adopts and incorporates by reference, the American Society of Mechanical Engineers publication CSD-1, Controls and Safety Devices for Automatically Fired Boilers, 2002 edition, referred to as CSD-1, unless another edition is specifically stated.

(3) remains the same.

~~(4) The department adopts and incorporates by reference, the National Board of Boiler and Pressure Vessel Inspectors, National Board Inspection Code (NBIC), 2004 edition.~~

~~(5) The NBIC is a nationally recognized inspection manual which establishes basic boiler safety inspection procedures. A copy of the NBIC may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.~~

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-101, MCA

REASON: The department is amending this rule to repeal the previous adoption and incorporation by reference of the National Board Inspection Code (NBIC) in favor of the American Society of Mechanical Engineers standards, except regarding traction engines. The department determined this is reasonably necessary to ensure uniformity and avoid overlapping and contradictory provisions by adopting by reference two separate national standards, with the exception of traction engine-related provisions of the NBIC. Provisions of the NBIC boilers conflict with the department's long-standing and effective inspection practices involving boilers. With

respect to traction engines, the NBIC provides inspection guidelines that are not otherwise provided in department rule and are proposed to be amended at ARM 24.301.714.

24.301.711 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Alteration" means any change in an item described on the original manufacturer's data report, which affects the pressure containing capability of the boiler.

(2) remains the same.

(3) "Boiler" means a closed vessel in which water is heated, steam is generated, steam is super-heated, or any combination thereof, under pressure or vacuum, for use external to itself, by the direct application of heat from combustible fuels or electricity. The term boiler includes fired units for heating or vaporizing liquids other than water, where these units are separate from processing systems and complete within themselves.

(4) and (5) remain the same.

(6) "Design professional" means a person who, by reason of special knowledge and use of the mathematical, physical, and engineering sciences, and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering, and who has been licensed as a professional engineer, and who has experience with boiler design and repair.

(6) through (10) remain the same, but are renumbered (7) through (11).

~~(11)~~ (12) "Internal inspection" means as complete an examination as can reasonably be made of the internal surfaces of a boiler while it is shut down, when such manhole plates, handhole plates, or other inspection opening closures are opened or removed for cleaning or repair.

(12) through (14) remain the same, but are renumbered (13) through (15).

~~(15)~~ (16) "Owner" means any person, firm, corporation, state, county, municipality, or other entity owning or possessing for operation any boiler within the state of Montana.

~~(16)~~ (17) "Potable water" means water which is utilized for drinking, culinary, and domestic purposes.

(17) through (21) remain the same, but are renumbered (18) through (22).

~~(22)~~ (23) "Standard boiler" means a boiler that bears a state of Montana stamp, the stamp of another state which has adopted equivalent boiler construction standards, an ASME stamp, a national board stamp, or other approved stamp acceptable to the department.

(23) through (26) remain the same, but are renumbered (24) through (27).

~~(27)~~ (28) "Traction engine" means a historic model, historic power boiler, portable steam engine, donkey engine, steam car, steam boat, steam locomotive, historical vertical boiler, or steam traction engine tractor utilized primarily for exhibition purposes.

~~(28)~~ (29) "User" means any person, firm, corporation, state, county, municipality, or other entity operating any boiler within the state of Montana.

(29) remains the same, but is renumbered (30).

AUTH: 50-60-203, 50-74-101, MCA  
IMP: 50-60-103, 50-60-201, 50-60-203, 50-74-101, 50-74-209, 50-74-215,  
MCA

REASON: The department determined it is reasonably necessary to add the definition of "design professional" at (6), to specify that the department will require a design professional to be a licensed professional engineer for the purposes of certification under ARM 24.301.722, that boiler repairs have been completed in compliance with established standards.

The definition of "traction engine" is amended to clarify that there are a broad variety of devices or vehicles that are included under this category, and provide better guidance to the public for the purposes of these rules.

24.301.718 BOILER INSPECTIONS (1) through (1)(e) remain the same.

(i) Boiler inspection reports shall be filed with the department within 30 days after inspection ~~on forms~~ in a manner acceptable to the department. Such report shall indicate the boiler has met the requirements imposed by Title 50, chapter 74, MCA, and that the boiler has been approved or rejected for operation by a special boiler inspector employed by the insurance company that insures the boiler.

(ii) All boilers which are insured by an insurance company employing a special boiler inspector shall be inspected within 90 days of the inspection due date. When a special inspector fails to inspect and submit a report to the department within this grace period, the department shall complete the required inspection and charge a fee pursuant to ARM 24.301.714.

(ii) remains the same, but is renumbered (iii).

~~(2) Steam heating boilers and power~~ Power boilers must be inspected internally:

(a) remains the same.

(b) during a scheduled maintenance shutdown, with prior approval from the department and the insurance company, if the boiler is inspected by a special boiler inspector employed by the insurance company.

AUTH: 50-60-203, 50-74-101, MCA  
IMP: 50-60-203, 50-74-101, 50-74-206, 50-74-209, 50-74-215, 51-74-217,  
MCA

REASON: The department is amending (1)(e)(i) to clarify the requirements and format for the submittal of inspection reports. These changes are necessary to conform to requirements of the department's software system and to qualify the submittal as meeting the established benchmark for inspection.

To promote the regular inspection of boilers, the department is adding (1)(e)(ii) to clarify that the department will, after a 90-day grace period, assume inspection duties to determine compliance with the boiler safety code when a special inspector fails to meet the inspection interval criteria. The department is removing steam heating boilers from (2), because the design of a steam heating boiler does not lend itself to an internal inspection. The department has revised and added

language to allow for internals to be on power boilers and to allow insurance inspectors to weigh in on the timing of the required internal inspection.

24.301.719 ASSIGNMENT OF STATE IDENTIFICATION NUMBER (1) At the time of the initial boiler inspection, the state boiler inspector ~~or special boiler inspector~~ will assign and apply to the boiler a state identification number as directed by the department.

(2) through (4) remain the same.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-102, 50-74-206, MCA

REASON: The department is amending this rule to remove "special boiler inspector", because the duty to install and properly document the original boiler number on a given device into the state inspection system, and track the completion of inspections thereafter, is solely that of state boiler inspectors. A "special boiler inspector" is not an agent or employee of the state, but rather, an agent or employee of an insurance carrier who is merely authorized to perform limited inspections.

24.301.724 TRACTION ENGINES (1) Traction engines shall not be placed into operation, prior to the issuance of an operating certificate by the department, unless written permission is obtained from the department to operate the traction engine on a temporary basis.

(2) Every traction engine shall have a ~~log book~~ logbook, maintained by the owner or user, which indicates operational hours, repairs, defects, adverse operating conditions, or other information related to the boiler.

~~(3) Traction engines, except historic models, which are utilized to operate belt drive equipment and machinery shall be roped off or barricaded to prevent public access within six feet of a moving part of the equipment and machinery.~~

~~(4)~~ (3) At least 30 days prior to a public gathering or show of traction engines, the show promoter, manager, fair board, or other responsible party shall report to the department all traction engines that are intended to be operated in the show.

(4) The department adopts and incorporates by reference the following sections of the National Board of Boiler and Pressure Vessel Inspectors, National Board Inspection Code (NBIC), 2007 edition for all traction engines: Part II, Section 6, Supplement 1 and Supplement 2. A copy of the NBIC may be obtained from the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183.

AUTH: 50-60-203, 50-74-101, MCA

IMP: 50-60-203, 50-74-101, 50-74-104, MCA

REASON: The department determined it is reasonably necessary to amend (1) and require written requests for permission to run traction engines to ensure clear and verifiable communication. The department is deleting (3) to clarify that belt driven equipment is not under the authority of the department as part of the boiler safety laws and rules.

The department is adding (4) to adopt Part II, Section 6, Supplement 1 and 2 of the 2007 NBIC, to incorporate the inspection methods for traction engines and locomotives, because the department otherwise does not have specific inspection standards for these types of equipment.

5. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) "Conveyance" as used in this rule means the equipment, associated parts, and hoistways set forth at 50-60-704(1), MCA. It does not include conveyances in private residences, farms, or ranches.

(2) "Conveyance work" means the design, construction, alteration, operation, maintenance, repair, inspection, installation, and testing of the equipment set forth at 50-60-704(1), MCA.

(3) "Private residences" for the purposes of applying the permit exclusion at 50-60-703, MCA, include only those conveyances contained wholly within a single, private residence, for personal use by the owner. Conveyances to which the public may gain access are not deemed to be within a private residence. However, any person performing conveyance work in a private residence or on a farm or ranch is still subject to the elevator contractor, mechanic, and inspector licensing requirements in Title 37, chapter 73, MCA.

AUTH: 50-60-203, 50-60-705, 50-60-715, MCA

IMP: 37-73-201, 37-73-203, 37-73-208, 37-73-212, 50-60-703, 50-60-704, 50-60-705, 50-60-715, MCA

REASON: The department is defining "conveyance" in (1) to provide a reference to the statutory list of covered equipment in 50-60-704, MCA, instead of repeating the laundry list over and over again in rule. Referring to the statute, which is the most accurate and authoritative source, will ensure consistency in application of the rules, and will help avoid inadvertent errors in repeating the list in multiple locations.

In (2), the term "conveyance work", as it is used in (3) and elsewhere in subchapter 301, is necessary to distinguish the types of activities that require a licensed elevator mechanic or inspector.

It is reasonably necessary to define "private residence" to distinguish elevators in areas that are accessible by the public in multiple family dwellings, for example, as opposed to elevators that are located inside of a residence and inaccessible to the public, including delivery and shipping personnel. The definition further clarifies that even though conveyances in private residences are not subject to permit requirements, it is still a legal requirement to have licensed personnel perform any type of conveyance work on conveyances in a private residences.

NEW RULE II TAG OUT AND LOCK OUT – STOP-WORK ORDERS (1) Whenever the department finds that a deficient condition presents an imminent threat to public safety or welfare, it may immediately post a stop-work order in a conspicuous place on or near the conveyance and perform a "tag-out" and "lock-out" to deactivate the conveyance, pending satisfactory correction by the owner or

lessee. The owner or lessee shall ensure the stop-work order is legibly maintained as posted by the department.

(2) Only after the department determines that the public safety threat has been sufficiently abated may it authorize removal of the stop-work order and reactivation of the conveyance.

(3) Only a department inspector may reverse the stop-work order imposed under this rule after personal reinspection of the conveyance.

(4) The owner or lessee may appeal a stop-work order by requesting an administrative hearing as authorized by 50-60-105, MCA.

AUTH: 50-60-705, 50-60-709, MCA

IMP: 50-60-105, 50-60-705, 50-60-709, MCA

REASON: The department determined it is reasonably necessary to adopt New Rule II to relocate and clearly set forth the provisions previously in ARM 24.301.607(8). The department is specifying the standard for issuance of a stop-work order to be deficiencies that present an imminent threat to public safety or welfare. Additionally, the amendments clarify to staff and the public the ability to appeal the department's decision by requesting a hearing as provided by statute.

6. The rules proposed to be repealed are as follows:

24.142.401 GENERAL found at ARM page 24-12835.

AUTH: 37-1-101, 37-73-102, 50-60-203, MCA

IMP: 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212, 37-73-216,  
MCA

REASON: It is reasonably necessary to repeal this rule as it unnecessarily and inaccurately repeats the provisions of 37-73-101, MCA, (definitions of contractor, inspector, and mechanic) and 37-73-201, MCA, (licensed required for practice). Further, the rule provides no additional procedural or definitional guidance to assist the public or the program in interpreting the statute.

24.142.501 DOCUMENTATION OF SUITABLE TRAINING AND EXPERIENCE found at ARM page 24-12845.

AUTH: 37-73-102, MCA

IMP: 37-1-104, 37-73-102, 37-73-201, 37-73-203, 37-73-208, 37-73-212,  
MCA

REASON: The department is repealing this rule because it conflicts with 37-73-203, MCA, which expressly requires three years of experience as verified by "current and previous employers." The plain statutory language rules out education or training other than on-the-job training from an employer. The rule could be interpreted to allow for situations when an applicant may not be able to obtain the verification of a past employer, in which case the department may accept alternative, reliable

verification. This concept, as well as the language in (4) defining a "year," is being moved to ARM 24.142.502 within this notice.

24.301.608 REINSPECTION - FEE found at ARM page 24-32002.

AUTH: 50-60-203, 50-60-705, 50-60-711, MCA

IMP: 50-60-103, 50-60-201, 50-60-211, 50-60-705, 50-60-711, MCA

REASON: It is reasonably necessary to repeal this rule since the department is clarifying and relocating (1) and relevant portions of (4) to ARM 24.301.607. Sections (2) and (3) are repealed because under 50-60-711, MCA, fees must be reasonable, based on the equipment being inspected, and not to exceed the costs of providing an inspection.

The first sentence of (4) is repealed because plan review and permitting is entirely separate, in both function and expense, from inspection, and the fees are set and collected separately. The department is eliminating the provision regarding a charge for travel as there is no statutory authority for this charge.

24.301.609 INSPECTION INTERVAL EXTENSION found at ARM page 24-32002.

AUTH: 50-60-203, 50-60-705, MCA

IMP: 50-60-103, 50-60-201, 50-60-705, 50-60-711, MCA

REASON: It is reasonably necessary to repeal this rule as it contradicts the statutory requirement in 50-60-711, MCA, that inspections must be done annually, except that freight elevator inspections must be conducted every two years. The department lacks the authority to allow owners to waive this requirement and procedurally, there is no reason why inspections cannot be done on an annual basis.

24.301.611 MODIFICATIONS, APPEALS AND VARIANCES found at ARM page 24-32003.

AUTH: 50-60-203, 50-60-705, MCA

IMP: 50-60-201, 50-60-206, MCA

REASON: It is reasonably necessary to repeal this rule because the provision in (1) is being replaced with an administrative hearing remedy after a correction notice or stop-work order in New Rule II. Section (2) is deleted because it incorrectly references 50-60-206, MCA, which only applies to the "state building code" in parts 1 through 4 of Title 50, chapter 60, MCA. Although the correct reference would be 50-60-705, MCA, which permits the department to modify or grant exceptions to relevant statutes or rules as long as public safety or welfare would not be jeopardized, the rule is unnecessary as this is adequately addressed in statute.

7. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be



submitted to Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to dcook@mt.gov, and must be received no later than 5:00 p.m., November 9, 2012.

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

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed for each program. 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 program 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 Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2050; e-mailed to dcook@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. Colleen White, attorney, has been designated to preside over and conduct this hearing.

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

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

Certified to the Secretary of State October 1, 2012

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

In the matter of the amendment of ) NOTICE OF PROPOSED  
ARM 37.50.901 pertaining to ) AMENDMENT  
interstate compact on the placement )  
of children ) NO PUBLIC HEARING  
) CONTEMPLATED

TO: All Concerned Persons

1. On November 10, 2012, the Department of Public Health and Human Services proposes to amend 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 November 1, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.50.901 INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN

(1) The Department of Public Health and Human Services adopts and incorporates by reference the regulations adopted by the Association of Administrators of the Interstate Compact on the Placement of Children as amended through ~~April 18, 2010~~ May 6, 2012. These regulations interpret the interstate compact on the placement of children and include clarifications of the applicability of the interstate compact on the placement of children with regard to the following:

(a) and (b) remain the same.

(c) interstate placement of a child ~~into the home of the~~ for adoption or foster care or with the child's parent, or relative or nonagency guardian;

(d) definitions and placement categories, applicability and exemptions;

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

~~(g)~~ (h) procedures for ~~priority~~ expedited placements;

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

~~(j)~~ (k) applicability to guardianships; ~~and~~

~~(k)~~ (l) responsibility of states to supervise children; and

(m) private and independent adoptions.

(2) A copy of the regulations adopted by the Association of Administrators of the Interstate Compact on the Placement of Children as amended through ~~April 18,~~

~~2010~~ May 6, 2012, can be obtained from the Department of Public Health and Human Services, Child and Family Services Division, 301 South Park Avenue, Room 568, P.O. Box ~~202954~~ 8005, Helena, MT ~~59620-2954~~ 59604.

AUTH: 52-2-111, MCA

IMP: 41-4-101, 52-2-111, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.50.901 pertaining to interstate compact on the placement of children. The Interstate Compact on the Placement of Children (ICPC) is an agreement that states enter into to assure safe placements of children when they are sent from one state to another for purposes of custody or foster care.

Under 41-4-101, MCA, Article VII, the state administrator of the ICPC has the power to promulgate rules to carry out the provisions of the Compact. The regulations, enacted by the Association of Administrators of the ICPC (AAICPC) as of May 6, 2012, are proposed to be adopted in ARM 37.50.901(1)(a) through (m) for use in Montana.

The AAICPC-enacted regulations reflected in the proposed amendments to ARM 37.50.901 include: Regulation 2 (interstate placement of a child for adoption or foster care or with the child's parent or relative) as amended on May 1, 2011, effective October 1, 2011; Regulation 3 (definitions and placement categories, applicability and exemptions) as amended on May 1, 2011, effective October 1, 2011; Regulation 4 (residential placements) as amended on May 5, 2012, effective October 1, 2012; Regulation 5 (central state compact office) as amended on May 5, 2012, effective July 1, 2012; Regulation 7 (expedited placement decision) as amended on May 1, 2011, effective October 1, 2011; and Regulation 12 (private/independent adoptions) as adopted May 6, 2012, effective October 1, 2012.

The amendments to ARM 37.50.901 are necessary so that Montana is following the same AAICPC regulations that other states have adopted.

For the ICPC regulations themselves, proposed changes are submitted to each state at least 30 days prior to the annual AAICPC Business Meeting. Voting on new regulations and amendments to existing ones is done at the meeting. The AAICPC regulations are incorporated into states' rules to assist in the administration and enforcement of the ICPC. The regulations for the proposed amendments to ARM 37.50.901 were enacted at AAICPC's meetings held in 2011 and 2012.

#### Fiscal Impact

No fiscal impact is anticipated due to the amendment of this rule.

5. The department intends to apply these rules retroactively to October 1, 2012. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kenneth Mordan, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on November 8, 2012. Comments may also be faxed to (406) 444-9744 or e-mailed to [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov).

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kenneth Mordan at the above address no later than 5:00 p.m., November 8, 2012.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 33 persons based on 250 Department of Public Health and Human Services Child Protection Specialists, five attorneys in Montana who do private interstate adoptions as part of their practice each year, and 75 parents, probation officers, parole officers, and Tribal Social Services staff who place Montana children in out-of-state residential treatment facilities each year.

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

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

may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Michelle Maltese  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.86.805, 37.86.1802, and ) PROPOSED AMENDMENT  
37.86.1807 pertaining to durable )  
medical equipment and hearing aids )

TO: All Concerned Persons

1. On October 31, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on October 24, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) and (1)(a) remain the same.

(b) the amount specified for the particular service or item in the department's fee schedule. The department adopts and incorporates by reference the department's Hearing Aid Fee Schedule dated January ~~2012~~ 2013. A copy of the department's fee schedule is posted at <http://medicaidprovider.hhs.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951; or

(c) and (2) remain the same.

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

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

37.86.1802 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, GENERAL REQUIREMENTS (1) remains the same.

(2) Reimbursement for prosthetic devices, durable medical equipment, and medical supplies shall be limited to items delivered in the most appropriate and cost

effective manner. Montana Medicaid adopts Medicare coverage criteria for Medicare covered durable medical equipment as outlined in the Region D Supplier Manual, local coverage determinations (LCDs) and national coverage determinations (NCDs) dated January 2012 2013. For prosthetic devices, durable medical equipment, and medical supplies not covered by Medicare coverage will be determined by the department. The items must be medically necessary and prescribed in accordance with (2)(a) by a physician or other licensed practitioner of the healing arts within the scope of his practice as defined by state law.

(a) The prescription must indicate the diagnosis, the medical necessity, and projected length of need for prosthetic devices, durable medical equipment, and medical supplies. The original prescription must be retained in accordance with the requirements of ARM 37.85.414. Prescriptions may be transmitted by an authorized provider to the durable medical equipment provider by electronic means or pursuant to an oral prescription made by an individual practitioner and promptly reduced to hard copy by the durable medical equipment provider containing all information required. Prescriptions for durable medical equipment, prosthetics, and orthotics (DMEPOS) shall follow the Medicare criteria outlined in chapters 3 and 4 of the Region D Medicare Supplier Manual (January 1, 2012 2013), which is adopted and incorporated by reference. A copy of the Region D Medicare Supplier Manual may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951. For items requiring prior authorization the provider must include a copy of the prescription when submitting the prior authorization request.

(i) remains the same.

(b) Subject to the provisions of (3), medical necessity for oxygen is determined in accordance with the Medicare criteria outlined in the Medicare Durable Medical Equipment Regional Carrier (DMERC) Region D Supplier Manual, (January 1, 2012 2013), Local Coverage Determination (LCD) and policy articles (January 1, 2012 2013), and National Coverage Determination (NCD) (January 1, 2012 2013), which are adopted and incorporated by reference. The Medicare criteria specify the health conditions and levels of hypoxemia in terms of blood gas values for which oxygen will be considered medically necessary. The Medicare criteria also specify the medical documentation and laboratory evidence required to support medical necessity. A copy of the Medicare criteria may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

(c) through (5) remains the same.

(6) The following items are not reimbursable by the program:

(a) through (r) remain the same.

(s) items included in the nursing home per diem rate; and

(t) backup equipment; and

(u) safety equipment unless explicitly covered by Medicare.

(7) remains the same.

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

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

37.86.1807 PROSTHETIC DEVICES, DURABLE MEDICAL EQUIPMENT, AND MEDICAL SUPPLIES, FEE SCHEDULE (1) remains the same.

(2) Prosthetic devices, durable medical equipment, and medical supplies shall be reimbursed in accordance with the department's Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Fee Schedule, effective January ~~2012~~ 2013, which is adopted and incorporated by reference. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's Prosthetic Devices, Durable Medical Equipment, and Medical Supplies Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951.

(3) and (4) remain the same.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.86.805, 37.86.1802, and 37.86.1807 pertaining to durable medical equipment and hearing aids to reflect updated Medicare fees and updated Medicaid fee schedule rates of reimbursement. The proposed rule amendments will communicate the program rules and guidelines set forth by Medicare. The amendments proposed by the department are necessary to maintain compliance with Medicare requirements. Failure to remain in compliance can result in loss of federal funding for Medicaid services.

ARM 37.86.805

The department is proposing these amendments to change fee schedule dates to January 1, 2013 to reflect changes in Medicare rates.

ARM 37.86.1802

The department is proposing these amendments because the Medicare Supplier Manual and Local Coverage Determinations (LCD), policy articles and National Coverage Determinations (NCD) are being updated to January 1, 2013 to reflect changes in Medicare policy. The department is taking this opportunity to specifically state existing policy that safety equipment, unless explicitly covered by Medicare, is not reimbursable by the program.

ARM 37.86.1807

The department is proposing these amendments to reflect the January 2013 fee schedule that incorporates Medicare fees.

Fiscal Impact



The proposed rule amendments are estimated to affect 392 DME providers, 25 hearing aid providers; 35 audiology providers, and 93,685 Medicaid recipients.

The cumulative amount of the fiscal impact for all persons affected by the proposed increase, decrease or new amount for each rule is as follows:

ARM 37.86.805:

SFY 2013

State General Fund:	\$404	Federal Funds:	\$783	Total:	\$1,187
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ARM 37.86.1802 and 37.86.1807

SFY 2013

State General Fund:	\$34,955	Federal Funds:	\$67,824	Total:	\$102,799
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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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 8, 2012.

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

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

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

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

/s/ John Koch  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.81.304 pertaining to ) PROPOSED AMENDMENT  
maximum Big Sky RX premium )  
change )

TO: All Concerned Persons

1. On October 31, 2012, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on October 24, 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 amended provides as follows, new matter underlined, deleted matter interlined:

37.81.304 AMOUNT OF THE BIG SKY RX BENEFIT (1) An applicant eligible for the Big Sky Rx PDP premium assistance may receive a benefit not to exceed ~~\$36.02~~ \$34.61 per month. The benefit amount will not exceed ~~\$36.02~~ \$34.61 regardless of the cost of the premium for the PDP the individual chooses.

(a) If a portion of the applicant's PDP premium is paid through the Extra Help Program, the Big Sky Rx Program will pay the applicant's portion of the PDP premium up to ~~\$36.02~~ \$34.61 per month.

(b) Big Sky Rx does not pay for the cost of an enrollee's drugs or the cost of an enrollee's deductible, coinsurance, or copayments.

(c) All expenditures are contingent on legislative appropriation. The amount of the monthly benefit, ~~\$36.02~~ \$34.61, extends the Social Security Extra Help benefit amount to Montana residents with income up to 200% FPL. The department's total expenditure for the program will be based on appropriation and the number of enrolled applicants.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-2-201, 53-6-1001, 53-6-1004, 53-6-1005, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.81.304 pertaining to the Big Sky Rx monthly benefit payment. These rules are being updated to match the Low Income Subsidy (LIS) for Medicare Part D for this region.

##### ARM 37.81.304

Changes are necessary to this rule to ensure the monthly benefit does not exceed the Low Income Subsidy (LIS) set for this region. Since the inception of Big Sky Rx the benefit has mirrored the LIS to ensure a reasonable and prudent monthly benefit for enrolled members.

This rule will now match the federal monthly benefit benchmark as set forth in the Centers for Medicaid and Medicare Services (CMS) letter dated August 6, 2012. This current rule amendment attempts to clearly communicate to the public program rules and guidelines. These amendments were proposed only after extensive consideration of their impact on providers and recipients.

##### Fiscal Impact

The number of people affected by the decrease of maximum premium from \$36.02 to \$34.61 is 5,500. This proposal would reduce the total monthly benefit by \$5,893.57 and total yearly benefit by \$70,722.84.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 8, 2012.

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

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

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of

State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ John Koch  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

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

In the matter of the adoption of New ) NOTICE OF PUBLIC HEARING ON  
Rules I through IV pertaining to ) PROPOSED ADOPTION  
discontinuation of services )

TO: All Concerned Persons

1. On October 31, 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 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 24, 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 DISCONTINUATION OF SERVICES: PURPOSE (1) These rules provide a process by which a contracted provider of state-funded developmental disabilities home and community-based services may seek to discontinue the delivery of services to a person who is in receipt of services from that provider.

AUTH: 53-6-402, 53-20-204, MCA  
IMP: 53-6-402, 53-20-205, MCA

NEW RULE II DISCONTINUATION OF SERVICES: PROVIDER INITIATED  
(1) When a person receiving developmental disability community services from a service provider refuses to cooperate in service delivery as provided for in their plan of care or otherwise fails to substantively engage in their plan of care or when the person's health and safety needs cannot appropriately be managed by the provider, the provider may follow the process provided in these rules to be relieved of service delivery responsibilities for the person. The provider will continue to provide services to ensure the persons' health and safety until an alternative solution is established.

(2) The provider who wishes to discontinue the services must provide notice of the provider's intent to discontinue services in writing and submit the notice to:

(a) the regional manager or designee of the developmental disabilities program of the region in which the person resides;

(b) the person with a developmental disability;

(c) the case manager for the person;

(d) the legal representative for the person, if applicable;

(e) the advocate for the person, if applicable; and

(f) the designee at the state facility, if applicable.

(3) The statement of intent to discontinue services must include:

(a) the issues that the provider contends cause the need to discontinue the services; and

(b) thorough documentation of the past and current efforts made by the provider and others to provide the services to the person.

(4) The regional manager or designee will schedule a meeting within two working days after the receipt of the notice of intent to discontinue services from the provider. The meeting will include the regional manager or the regional manager's designee, the members of the person's plan of care team, the provider, and if applicable, a designee from the state facility. The meeting may be conducted telephonically. If the person's legal representative is not available within two working days, the meeting must be scheduled at the earliest possible time the legal representative is available.

(5) The purpose of the meeting is to review the basis for the notice and determine if a change in the configuration of the current services or additional supports may assist the person to remain in or return to services with the current provider and, if so, identify those services or supports. The planning team determines if additional services or supports may assist the person to remain with the current provider. The planning team must develop a supplemental plan of care which identifies the actions to implement the determination for the person's services.

(6) The department reviews the supplemental plan of care developed by the planning team to assess the feasibility of the plan and to suggest further changes if desired. If the plan provides for the delivery of additional services or for interim supports to the person at an additional cost, the department must approve those through an adjustment to the person's individual cost plan.

(7) If a person who is the subject of a discontinuation of services process is admitted to Montana Developmental Center, Montana State Hospital, a hospital, or to any other facility, the person's ongoing discontinuation of services process and all applicable dates are suspended until the person returns to the community service unless the department determines that the person's admission is on a long-term basis. Admission to a facility is inclusive of commitment, emergency detention, emergency admission, court-ordered precommitment detention, voluntary admission, or any other process resulting in a person being placed in a facility.

(8) If it is determined in the course of planning that an alternative provider is required, the case manager will assist the person, the legal representative, or both in seeking an alternative provider as described in the developmental disabilities program porting policy. The case manager will place the person on the port list. If additional funding is required, the case manager will also place the person on the waiting list for screening into an opening with sufficient funding in accordance with the screening policy of the department.

(9) If it is determined that it is appropriate and an alternative placement has not been located within 90 days, the discontinuation of services process must be extended for a second 90 days to allow additional time to pursue an alternative placement. The regional manager or the regional manager's designee, the members of the person's plan of care team, the provider, and a designee from the state facility, if applicable, must reconvene to review the actions taken to locate an alternative provider and to identify the mechanisms needed to continue to pursue an alternative provider. If at the end of the second 90 days an alternative provider has not been located, the discontinuation of services process may proceed.

(10) A provider must abide by applicable statutes or regulations of the state of Montana regarding the relationship between the landlord and tenant.

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

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

NEW RULE III DISCONTINUATION OF SERVICES: PART C (1) Each contractor providing Part C services must have a written policy covering discontinuation of Part C services.

(2) Prior to providing Part C services to a family, the contractor will have each family read the discontinuation of services policy referenced in (1), or will read the policy to the family, and have the family acknowledge receipt of the discontinuation criteria by their signature.

(3) The contractor must have documentation in each family's file that confirms the following:

- (a) the reason for discontinuation of services;
- (b) notification provided to the family of the pending discontinuation of services in accordance with the requirements of CFR Section 303.421; and
- (c) notification provided to the family of the grievance procedure outlined in ARM 37.34.109.

(4) The contractor must specify the reason for discontinuation of services. The reason must include one of the following:

- (a) the family declines services, either by:
  - (i) notifying the contractor of their decision to decline services; or
  - (ii) failing to respond to at least two attempts by the contractor to contact them regarding continuation of services. Contractors must document these attempts in the family file.
- (b) the person is transitioned into a more appropriate service;
- (c) temporary services, as determined at onset, have reached conclusion;
- (d) the person is determined ineligible;
- (e) the contractor has evidence of misuse of agency funds by the family;
- (f) the family moves from the service area; or
- (g) the death of the person.

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

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



RULE IV DISCONTINUATION OF SERVICES: FAIR HEARING REQUIREMENTS (1) A person who is aggrieved of a change in services resulting from a discontinuation of services process under these rules is entitled to a fair hearing as provided for at ARM 37.5.115.

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

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

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing New Rules I through IV to explain the procedure taken when a provider can no longer serve a person while ensuring their health and safety and the health and safety of others. These proposed rules are necessary to give providers guidance through the discontinuation of services process, allow the department and the persons with developmental disabilities to find alternative placements, and provide support to both the providers and the persons with developmental disabilities.

In creating the process, the department looked at both the needs of the people receiving the services as well as the providers. It is imperative that providers, who cannot meet the health and safety needs of a person with developmental disabilities, have opportunity to seek a remedy for both the provider as well as the person with a developmental disability. The department believes the proposed language supports finding the best solution possible that will ensure the health and safety of the person through a collaborative effort.

##### New Rule I

The department proposes New Rule I to declare the purpose of these rules. It is necessary for the purpose of these rules to be clearly developed and defined to give providers a clear understanding of when to apply these rules.

##### New Rule II

The department proposes New Rule II to describe the process that must be taken in order to discontinue services of a person with developmental disabilities.

##### New Rule III

The department proposes New Rule III to give further detail under which circumstances a provider may discontinue services to a child receiving Part C of the Individuals with Disabilities Education Act as amended in 2004. This rule is necessary to provide service contractors guidelines to ensure federal regulation is abided by and that appropriate due process is provided.

##### New Rule IV

Proposed New Rule IV is necessary to provide information in the event a person is aggrieved by the discontinuation of services process.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 8, 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/ Cary B. Lund  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

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

In the matter of the adoption of New Rules I through III, the amendment of 37.34.1101, 37.34.1102, 37.34.1103, 37.34.1107, 37.34.1108, and 37.34.1114 and the repeal of 37.34.1109 and 37.34.1115 pertaining to plan of care ) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT, AND REPEAL ) ) ) ) ) )

TO: All Concerned Persons

1. On October 31, 2012, at 3:00 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, at Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on October 24, 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 PLAN OF CARE: PERSONAL SUPPORT PLAN: ASSESSMENTS (1) The case manager must complete the following annual assessments for the purpose of personal support planning:

(a) a consumer survey to be completed upon the person's entry into services and annually thereafter; and

(b) a risk factor for health and safety form.

(2) The residential provider agency must supply the following assessments, if applicable:

(a) physical: yearly, unless otherwise recommended by the person's physician;

(b) dental: yearly, unless otherwise recommended by the person's dentist;

(c) hearing: as determined by the person's health care professional; and

(d) vision: as determined by the person's health care professional.

(3) Providers must address the following assessment domains:

(a) living;

(b) employment;

- (c) educational;
- (d) developmental; and
- (e) social.

(4) If the person with a developmental disability is not receiving residential services by a provider agency, the case manager must obtain the assessments in (2).

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

NEW RULE II PLAN OF CARE: INDIVIDUAL FAMILY SERVICE PLAN:

PURPOSE (1) An individual family service plan (IFSP) must be adopted for children through 16 years of age who are receiving federally authorized Part C early intervention or Medicaid funded services. An IFSP is a written plan which denotes supports for a child and a child's family as identified through multidimensional and multidisciplinary assessment and information gathering. The IFSP serves as an agreement between the family with an eligible child, agencies, and other service providers.

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

NEW RULE III PLAN OF CARE: INDIVIDUAL FAMILY SERVICE PLAN:

IMPLEMENTATION (1) The individual family services plan (IFSP) must be developed in accordance with the Part C early intervention federal regulations at 34 CFR 303.340 through 303.345.

(2) The department will establish policies and procedures for the development and implementation of the IFSP that are in compliance with governing federal laws and regulations.

(3) The department hereby adopts and incorporates by reference the federal regulations at 34 CFR 303.340 through 303.345. 34 CFR 303.340 through 303.345 contain the requirements under which an IFSP must be developed, reviewed, and implemented. A copy of the cited requirements is available from the Department of Public Health and Human Services, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604.

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

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

37.34.1101 ~~INDIVIDUAL PLAN~~ PLAN OF CARE: PERSONAL SUPPORT

PLAN: PURPOSE (1) ~~An individual plan~~ A personal support plan (PSP) identifies the supports and services that are necessary for a person receiving state-administered developmental disabilities services to achieve independence, dignity and personal fulfillment. ~~for a person receiving developmental disabilities services.~~

~~The individual plan ensures that the provision of developmental disabilities services is systematic and that training is designed to enhance the development of the person receiving services. The PSP is a person-driven and person-centered plan that assesses an eligible person's needs and identifies services that are appropriate to meet the person's assessed needs.~~

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1102 INDIVIDUAL PLAN: PLAN OF CARE: PERSONAL SUPPORT PLAN: IMPLEMENTATION (1) ~~A single, comprehensive individual plan must be developed and maintained by an individual planning team for each recipient of state funded developmental disabilities services. Individual plans are not required for persons who are only recipients of one or more of the following developmental disabilities services: An initial personal support plan (PSP) must be developed by the PSP team with the participation of the person within 30 calendar days of the person's entry into a service program or when the person moves from services in one community to services in another community. The PSP may be reviewed within 60 days of adoption if needed to accurately reflect the person's needs for support and services. The PSP must be reviewed annually by the PSP team and updated to accurately reflect the person's needs for support and services.~~

~~(a) family services where an individual family service plan (IFSP) or an annual service agreement exists;~~

~~(b) transportation;~~

~~(c) adaptive equipment; or~~

~~(d) case management.~~

~~(2) An initial individual plan must be developed by the individual planning team within 30 calendar days of a person's entry into a service program, implemented within two calendar weeks of the date of its adoption unless otherwise specified by the team, and formally reviewed and revised at intervals determined by the team. A plan must be formally reviewed and revised as necessary within 12 months from the initial or previously reviewed individual plan. The person's case manager must schedule and facilitate all PSP meetings. The case manager:~~

~~(a) sends written notice to the person and the person's legal representative at least 14 days prior to the PSP meeting;~~

~~(b) meets with the person or the person and the PSP team prior to the PSP meeting to develop the person's vision statements; and~~

~~(c) posts the completed PSP on the department-approved data management system within 21 calendar days of the PSP meeting and provides a copy, if requested, to PSP team members who do not have access to the data management system.~~

~~(3) When a person moves from services in one community to services in another community a service coordination agreement must be in place prior to entry into the new service. The agreement is developed by members of the designated individual planning team at the new service with participation preferably in person, but at least in writing, of a representative from the sending team. The service coordination agreement identifies critical service and training objectives for the~~

person to be implemented immediately upon entry into the new service. Providers must submit the assessments required by [New Rule I] with summaries to the case manager at least 14 calendar days prior to the PSP meeting and submit action plans no later than 14 calendar days after the PSP meeting.

(4) The day after the PSP meeting is the effective date of the PSP.

(5) The PSP team must conduct an annual PSP meeting with the person within the same month as the person's last annual PSP meeting.

(6) Each provider will revise the lifestyle and wellness, general information, and financial page in the PSP if the needs of the person necessitate a revision.

(7) Any member of the PSP team may request a review, or a revision, or both a review and revision to the PSP, as determined by the person's needs.

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1103 INDIVIDUAL PLAN: PLAN OF CARE: PERSONAL SUPPORT PLAN: COMPONENTS (1) Each individual plan must include the following: Each personal support plan (PSP) must include the following:

(a) any results of comprehensive assessments, both formal and informal, of the individual receiving services, which identify current abilities and needs. Assessments must include, but are not limited to, the following: Vision statements that describe where the person wants to live or work, what the person would like to learn, what social opportunities the person would like to be involved in, and what interests the person would like to pursue. Vision statements are written for a one to three year span of time.

(i) a physical examination, a health assessment and a dental examination completed at appropriate intervals as determined by the health professional;

(ii) a living skills assessment completed within 60 calendar days prior to the individual planning meeting;

(iii) developmental, educational, employment, social or leisure assessments completed or updated within 60 calendar days prior to the individual planning meeting unless the team determines and documents in the individual plan that an assessment should be conducted at other than annual intervals;

(iv) a self-assessment; and

(v) other reassessments as needed and identified by the person's individual planning team;

(b) the goals toward which the activities outlined in the plan will be directed; Outcome statements that define what the person wants to accomplish, written in the person's own words when possible, and directly relate to the person's vision statements.

(c) the specific objectives directed toward accomplishing the goals; and Action statements that define how the person will achieve the outcomes described in (b).

(d) a summary of medical, dental, and other health related appointments and records for the period since the last individual planning meeting. The summary must include the health professionals' names, the dates of service, the results of the person's most recent health examinations, a list of any prescribed medications, the

current methods of administration for any prescription medication, and the purpose of each medication.

~~(2) The objectives of an individual plan must be prioritized, stated separately in behavioral terms, specifying single outcomes.~~

~~(a) An objective must include the following elements:~~

~~(i) a statement of the conditions, as appropriate, in which the behavior is to occur;~~

~~(ii) an objective, measurable description of the behavior;~~

~~(iii) a statement of the acceptable level of performance;~~

~~(iv) the names of persons, along with their affiliations, who have been assigned responsibility for implementation of each objective;~~

~~(v) the dates by which the programs for each objective assigned by the individual planning team are to be implemented; and~~

~~(vi) the date by which each objective is expected to be met.~~

(2) A PSP must include an action plan if the person requires training or support to achieve the actions described in (1)(c). Each provider develops the action plan in accordance with department policy and provides it to the case manager within 14 calendar days after the PSP meeting. An action plan must also be completed when the person has the following needs:

(a) self-administration of medication;

(b) supported employment;

(c) rights restrictions; or

(d) positive behavior supports approved according to ARM Title 37, chapter 34, subchapter 14.

~~(3) The individual plan must be signed by all persons who have participated in developing the plan, including the person receiving services. Each participant must indicate whether the person agrees or disagrees with the plan. Each participant must acknowledge the confidential nature of the information presented and discussed.~~

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1107 INDIVIDUAL PLAN: PLAN OF CARE: PERSONAL SUPPORT PLAN: COMPOSITION OF INDIVIDUAL PLANNING PLAN TEAM (1) The individual planning personal support plan (PSP) team should must include the following persons if available and willing to participate:

(a) the person receiving services with a developmental disability, if able to participate;

(b) the advocate of the person receiving services, unless the person does not have an advocate, if applicable;

(c) the parents of the person receiving services or other family member(s), if the person is a minor or if the person, even though an adult, requests their participation;

(d)(c) the legal guardian representative of the person receiving services, unless the person does not have a guardian, if applicable;

(e)(d) the PSP certified case manager of the person receiving services;

~~(f)(e) at least one a staff person from each service program who works directly with the person receiving services; and~~

~~(g) the qualified mental retardation professional (QMRP) or designee from the institution of origin if the person receiving services has not yet been formally discharged from that institution;~~

~~(f) other persons(s) who are approved by the person.~~

~~(h) in cases where the person receiving services is currently enrolled in a public school, the persons designated to develop an individualized education plan (IEP);~~

~~(i) a field services specialist, if the case manager in (1)(e), herein, is a contracted case manager; and~~

~~(j) professionals such as psychologists, medical personnel and others, as needed.~~

~~(2) If the person receiving services, a legal guardian or parent of a minor or a legal representative is unable to participate in the PSP meeting, the reasons for that absence must be documented in writing by the case manager. the case manager must document the reasons for the absence.~~

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1108 INDIVIDUAL PLAN: PLAN OF CARE: PERSONAL SUPPORT PLAN: STATUS REPORTS AND ANNUAL PLANNING MEETING QUARTERLY REPORTS (1) For each person receiving services, an individual plan status report must be produced on a quarterly basis. Providers must complete a quarterly report for each action statement. The report must include:

~~(a) Each corporation providing services for the person receiving services must assign a representative to participate in the development of the quarterly individual plan status report. a brief summary of progress toward the attainment of the action statements listed in the personal support plan (PSP); and~~

~~(b) A copy of the individual plan status report must be provided to: a brief summary of any action taken to assure progress.~~

~~(i) the case manager; and~~

~~(ii) the developmental disabilities program program office, if the case manager is a contracted case manager.~~

~~(c) An individual plan status report must include the following:~~

~~(i) a summary of progress toward the attainment of the objectives listed in the individual plan;~~

~~(ii) the need for or the action taken to assure progress; and~~

~~(iii) the need, if any, to reconvene the individual planning team.~~

~~(d) The case manager will, depending on the individual plan status report:~~

~~(i) discuss the information with an assigned representative from the corporation;~~

~~(ii) observe the implementation of objectives;~~

~~(iii) review individual progress data to determine if there is a sufficient lack of progress to necessitate notification of the individual planning team; and~~



~~(iv) send individual plan status reports to other planning team members upon request.~~

~~(2) The individual planning team must meet at least annually to formally review the goals and objectives established at the previous planning meeting. In reviewing the previous plan, the team shall: Providers must submit quarterly reports:~~

~~(a) analyze progress data for each objective selected at the last team meeting; every three months after the actual date of the initial PSP meeting; or~~

~~(b) modify the goals and objectives as necessary; before the 30th day of January, April, July, and October, if the provider is on a calendar year schedule.~~

~~(c) determine satisfaction with current services and supports; and~~

~~(d) determine further services and supports that are needed.~~

~~(3) Providers must prepare the quarterly report in the fourth quarter for review at the annual PSP meeting.~~

~~(4) Providers must prepare and submit the quarterly report in the data management system approved by the department.~~

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

37.34.1114 INDIVIDUAL PLAN: PLAN OF CARE: PERSONAL SUPPORT PLAN: DECISION MAKING (1) ~~All decisions of an individual planning team must be made by consensus. The personal support plan (PSP) team must base all decisions on a team process which is person-driven and person-centered and ensures the health and safety of the person receiving services. The PSP team members must consider the:~~

~~(a) person's rights;~~

~~(b) person's needs, visions, and preferences;~~

~~(c) person's health and safety needs;~~

~~(d) Montana resources allocation (MONA) for the person; and~~

~~(e) person's cost plan (ICP).~~

~~(2) If an individual planning team does not have consensus on a matter, the team must adjourn for no more than 5 working days, to allow time for possible resolution of the matter at issue.~~

~~(3) A team member who disagrees with the plan or wishes to comment on a matter in the plan, must notify the case manager in writing within 5 working days of receipt of the plan or modification to the plan.~~

~~(4) The case manager must schedule an individual planning meeting within 5 working days of receiving written notice that a team member disagrees with the plan or a modification to the plan.~~

~~(5) At the individual planning meeting held to reconsider a matter upon which there is disagreement, if a consensus is not reached, the unresolved issues must be clearly stated in the meeting summary. The written summary is sent to each team member.~~

~~(6) Each individual planning team member who wishes to express a view point about issues upon which there is disagreement must submit the reasons for agreement or disagreement in writing to the case manager. The case manager must send a cover letter outlining the issues to the regional manager within 10~~

~~working days of the previous individual planning meeting. The meeting summary and any written materials submitted by team members are to accompany the letter.~~

~~(7) The regional manager, within 10 days of the receipt of a letter from a case manager relating to an appeal, reviews the matter at issue, and after consideration of the meeting summary and any written materials submitted by team members, arrives at a decision in the matter.~~

~~(8) If any individual planning team member is dissatisfied with the decision of the regional manager, the team member must notify the case manager in writing within 5 working days of receipt of the regional manager's decision. The case manager must refer the appeal immediately to the individual planning appeal committee as provided in ARM 37.34.1115(3).~~

~~(9) In cases where an appeal occurs involving an individual who is currently enrolled in public school, the following procedures apply:~~

~~(a) if the appeal arises in a situation where a team member is appealing an issue which impacts an individualized education program (IEP), federal and state authorities governing the IEP process shall have precedence over the appeal process in this rule;~~

~~(b) if the appeal arises in a situation where a team member is appealing an issue which does not concern the IEP, the appeal process in this rule shall apply.~~

~~(10) The decision of the individual planning appeal committee is the final administrative decision of the department.~~

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

IMP: 53-2-201, 53-6-402, 53-20-203, 53-20-205, MCA

5. The department proposes to repeal the following rules:

37.34.1109 INDIVIDUAL PLAN: DUTIES OF THE CASE MANAGER, is found on page 37-7469 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA

IMP: 53-20-203, MCA

37.34.1115 INDIVIDUAL PLAN: INDIVIDUAL PLANNING APPEAL COMMITTEE, is found on page 37-7474 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-204, MCA

IMP: 53-20-203, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.1101, 37.34.1102, 37.34.1103, 37.34.1107, 37.34.1108, and 37.34.1114 and repeal ARM 37.34.1109 and 37.34.1115 pertaining to plan of care, personal support plans. The department is also proposing New Rules I through III pertaining to plan of care, individual family service plans. The rules in subchapter 11 were enacted in 1993 and it is necessary to make the above-mentioned rule

changes in order to align the current rules with programmatic and policy updates. This rule change also serves to update the name from individual plan to personal support plan.

The rules as they currently exist reflect a team-driven planning process in which the plan is created for the person receiving services rather than with the person receiving services. It is necessary to change these rules to reflect the department's person-centered approach to creating a personal support plan with the person, based upon not only what is important for the person but what is important to the person as well.

#### New Rule I

The department is proposing New Rule I regarding the personal support plan required assessments. The assessments are the keystone of the person-centered thinking planning process. The assessments not only serve to ensure the health and safety of the person, but also provide the opportunity for the person to effectively communicate their vision in the areas of living, employment, education, development and social domains. In the current version of these rules, the assessments are embedded into the components listed in ARM 37.34.1103; however, in order to illuminate the importance of the assessments in person-centered plans, the department is proposing New Rule I to bring greater focus and emphasis on the assessments in the planning process.

#### New Rules II and III

The department is proposing New Rules II and III, individual family service plan (IFSP). New Rule II provides the purpose of the IFSP. It is necessary to differentiate the purpose of the personal support plan for adults and the IFSP for children and families. New Rule III adopts and incorporates the federal regulations for the development of the IFSP. There are specific requirements in the code of federal regulations that control the development of IFSPs, therefore, it is necessary for the department to adhere to the federal regulations.

#### ARM 37.34.1101

The department is proposing to amend the purpose of the personal support plan to better reflect the change from the individual plan, with service provisions created for the person to provide systematic support, to the personal support plan, which is person-driven and person-centered. It is necessary to reflect this change in purpose to create the foundation of person-driven and person-centered planning.

#### ARM 37.34.1102

The department is proposing language to amend the implementation of the personal support plan. This rule amendment is necessary to define the steps and timeframes involved in the creation of a personal support plan and to ensure the person's

involvement in the planning process via the development of the person's vision statements prior to the plan team meeting.

ARM 37.34.1103

The department is proposing to amend ARM 37.34.1103 in order to define the components of a personal support plan. The conversion of the plan of care from individual plans to personal support plans alters the terminology and definitions used in practice. This rule is necessary to identify each of the main components of a personal support plan and provides a clear understanding of the function of each component.

ARM 37.34.1107

The department is proposing to amend ARM 37.34.1107 to update the language from individual plan to personal support plan and to align the language with current policy. This is necessary in order to correlate rule language and current policy.

ARM 37.34.1108

The department is proposing to amend ARM 37.34.1108 to update the language from individual plan to personal support plan and to align the language with current policy. This is necessary in order to correlate rule language and current policy.

ARM 37.34.1114

The department is proposing to amend ARM 37.34.1114 to redefine the decision making process for the personal support plan. While the creation of a personal support plan is still a team process, the focus has shifted from creating the plan for the person to a team process which is person-centered. It is necessary to update the current language in which the team was the center of the process.

ARM 37.34.1109

The department is proposing to repeal ARM 37.34.1109. The responsibilities of the case manager in the planning process are clearly described in department policy.

ARM 37.34.1115

The department is proposing to repeal ARM 37.34.1115. This is necessary because the individual planning appeal committee no longer exists. ARM 37.5.115 outlines the Fair Hearing rules in relation to Montana developmental disabilities services.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-

9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 8, 2012.

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

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

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

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

/s/ Cary B. Lund  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.34.1501 and the repeal of ) PROPOSED AMENDMENT AND  
37.34.1502, 37.34.1506, 37.34.1507, ) REPEAL  
37.34.1511, 37.34.1512, and )  
37.34.1513 pertaining to incident )  
reporting )

TO: All Concerned Persons

1. On November 1, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on October 25, 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 amended provides as follows, new matter underlined, deleted matter interlined:

37.34.1501 INCIDENT REPORTING AND HANDLING, PURPOSE

(1) These rules govern the reporting and handling of incidents which harm or could result in harm to ~~individuals~~ persons with a developmental disability who ~~are recipients of~~ receive services funded by the developmental disabilities program of the department.

(a) ~~Incidents constituting abuse and neglect of a child as defined in 41-3-102, MCA or abuse, neglect and exploitation of a person with a developmental disability as defined in 52-3-803, MCA are subject to the statutory and rule provisions governing the reporting, investigation and protection of those persons. The~~ Developmental Disabilities Program Incident Management Procedures Manual, dated August 8, 2012, sets forth further requirements and criteria that govern the incident management system for the developmental disabilities program of the department.

(b) ~~The roles of the department in case management and protective services for persons with a developmental disability, abused and neglected children and abused, neglected and exploited older persons necessitate the provisions of these~~

~~rules relating to those responsibilities. The department hereby adopts and incorporates by reference the Developmental Disabilities Program Incident Management Procedures Manual, dated August 8, 2012.~~

~~(c) Incidents constituting abuse, neglect and exploitation of a person with a developmental disability are to be reported as provided for at 41-3-201 or 52-3-811, MCA, to the protective services programs of the department. A copy of the manual may be obtained through the Department of Public Health and Human Services, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.~~

~~(d) Incidents constituting abuse and neglect of a child as defined in 41-3-102, MCA or abuse, neglect, and exploitation of a person with a developmental disability as defined in 52-3-803, MCA are subject to the statutory and rule provisions governing the reporting, investigation, and protection of those circumstances.~~

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

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

4. The department proposes to repeal the following rules:

37.34.1502 INCIDENT REPORTING AND HANDLING, POLICY, is found on page 37-7533 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

37.34.1506 INCIDENT REPORTING AND HANDLING, is found on page 37-7537 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

37.34.1507 INCIDENT REPORTING AND HANDLING, DEATH, SUICIDE ATTEMPT, UNACCOUNTED FOR ABSENCE, EMERGENCY HOSPITALIZATION OR LAW ENFORCEMENT INVOLVEMENT, is found on page 37-7537 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

37.34.1511 INCIDENT REPORTING AND HANDLING, INVESTIGATIONS, is found on page 37-7541 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-205, MCA

37.34.1512 INCIDENT REPORTING AND HANDLING, CONFIDENTIALITY, is found on page 37-7541 of the Administrative Rules of Montana.

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

37.34.1513 INCIDENT REPORTING AND HANDLING, CLIENT ABUSE OR CLIENT PROBLEM BEHAVIOR, is found on page 37-7542 of the Administrative Rules of Montana.

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

##### 5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) proposes to amend ARM 37.34.1501 and to repeal ARM 37.34.1502, 37.34.1506, 37.34.1507, 37.34.1511, 37.34.1512, and 37.34.1513 pertaining to incident reporting and handling. The rules in subchapter 15 were enacted in 1988 and last amended in August of 1996. The department is proposing to amend the Incident Reporting and Handling rules governing incident management to reflect policy updates the department is instituting pertaining to the Developmental Disabilities Program Incident Management System and to adopt and incorporate by reference the manual, Developmental Disabilities Program (DDP) Incident Management Procedures Manual, dated August 8, 2012.

##### ARM 37.34.1501

The department proposes to amend the language in ARM 37.34.1501 to give notice of the adoption and incorporation by reference of a new manual containing the requirements adopted by DDP to govern incident reporting. The Developmental Disabilities Program Incident Management Procedures Manual, dated August 8, 2012, describes the processes used by the department when an incident occurs during the course of delivery of DDP funded services. It is necessary to amend this rule to adopt the above-referenced manual which provides structure and develops a consistent, statewide system of incident management, trend analysis reporting, and guidance for critical incident investigations for DDP service providers. The provisions of the manual require incidents that bring harm, or have potential to bring harm, to people served through the department and its network of service providers, to be immediately and routinely identified, reported, and reviewed as a part of each service provider's internal quality management system. The manual also aims to ensure the implementation of corrective action measures that will prevent the recurrence of similar incidents, along with other activities that allow service providers to be proactive in their responsibilities to reduce the risk of harm to people receiving DDP funded services.

Section 1 of the manual categorizes incidents that involve people receiving services, describes the data management system notification required for each level, illustrates notification procedures, and requires reporting under the Montana Elder



and Persons with Developmental Disabilities Abuse Prevention Act. This section is necessary to set the framework for consistent statewide DDP incident management.

Section 2 of the manual describes the internal processes that provider agencies must implement in order to protect people receiving services from harm, report incidents, designate staff roles in coordinating incident management, and to take action in response to an incident. This is necessary to present providers clear and concise direction when creating internal policy and procedures which in turn aids to better instruct staff on incident management systems.

Section 3 and Section 4 of the manual defines the roles and responsibilities of nonprovider agency staff, DDP staff, and the coordinators/committees who review reported incidents. Incident management requires a great deal of coordinated efforts and in order to be successful, it is necessary for each person to be informed of their responsibilities around those efforts.

Section 5 and the following appendices describe the types of reviews/investigations that may be required dependent upon the severity of the incident and provides the directives to carry out each type of review/investigation. This portion of the manual provides the protocols used to identify, collect, and analyze the evidence in an investigation, provides the process for reviewing the evidence and reconciling the information, and provides instruction for the incident report. The clarity in the manual of these steps is necessary to ensure the integrity of the review/investigation outcomes and corrective actions as well as the accuracy of trend analysis reporting.

The Department of Public Health and Human Services (the department) proposes to repeal ARM 37.34.1502, 37.34.1506, 37.34.1507, 37.34.1511, 37.34.1512, and 37.34.1513 pertaining to incident reporting and handling. It is necessary to repeal these rules because the rules were originally enacted in 1988, last updated in 1996, and no longer provide accurate information or direction in relation to current incident reporting and management. The manual, as proposed to be adopted and incorporated by reference in ARM 37.34.1501, will provide one accurate and updated source for providers and department staff to access the information required to provide successful incident management.

#### Fiscal Impact

There is no fiscal impact.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: 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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., November 8, 2012.

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

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

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

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

/s/ Cary B. Lund  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 42.21.113, 42.21.123, 42.21.131, )  
42.21.137, 42.21.138, 42.21.139, )  
42.21.140, 42.21.151, 42.21.153, )  
42.21.155, 42.22.1307, 42.22.1308, )  
42.22.1311, and 42.22.1312 related to )  
the trended depreciation schedules for )  
valuing property )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 14, 2012, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., October 26, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.21.113 LEASED AND RENTAL EQUIPMENT (1) Leased or rental equipment that is leased or rented on an hourly, daily, weekly, semimonthly, or monthly basis, but is not exempt under 15-6-202(4) or 15-6-219(5) or ~~15-6-202(4)~~, MCA, will be valued in the following manner:

(a) For equipment that has an acquired cost of \$0 to \$500, the department shall use a four-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 1.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2011	70%
2010	41%
2009	18%
2008 and older	8%
<u>2012</u>	<u>70%</u>

<u>2011</u>	<u>41%</u>
<u>2010</u>	<u>17%</u>
<u>2009 and older</u>	<u>8%</u>

(b) For equipment that has an acquired cost of \$501 to \$1,500, the department shall use a five-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 2.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2011	85%
2010	69%
2009	50%
2008	35%
2007 and older	21%
<u>2012</u>	<u>85%</u>
<u>2011</u>	<u>70%</u>
<u>2010</u>	<u>53%</u>
<u>2009</u>	<u>33%</u>
<u>2008 and older</u>	<u>21%</u>

(c) For equipment that has an acquired cost of \$1,501 to \$5,000, the department shall use a ten-year trended depreciation schedule. The trended schedule will be the same as ARM 42.21.155, category 8.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2011	92%
2010	85%
2009	77%
2008	72%
2007	64%
2006	56%
2005	46%
2004	36%
2003	29%
2002 and older	25%
<u>2012</u>	<u>92%</u>
<u>2011</u>	<u>86%</u>
<u>2010</u>	<u>79%</u>
<u>2009</u>	<u>70%</u>
<u>2008</u>	<u>64%</u>
<u>2007</u>	<u>56%</u>
<u>2006</u>	<u>45%</u>
<u>2005</u>	<u>36%</u>
<u>2004</u>	<u>30%</u>
<u>2003 and older</u>	<u>25%</u>

(d) For equipment that has an acquired cost of \$5,001 to \$15,000, the department shall use the trended depreciation schedule for heavy equipment. The schedule will be the same as ARM 42.21.131.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
2011	80%
2010	65%
2009	58%
2008	51%
2007	45%
2006	42%
2005	35%
2004	31%
2003	30%
2002	30%
2001	26%
2000	23%
1999	19%
1998	20%
1997	19%
1996	20%
1995	15%
1994	16%
1993 and older	16%
<u>2013</u>	<u>80%</u>
<u>2012</u>	<u>65%</u>
<u>2011</u>	<u>59%</u>
<u>2010</u>	<u>56%</u>
<u>2009</u>	<u>48%</u>
<u>2008</u>	<u>44%</u>
<u>2007</u>	<u>43%</u>
<u>2006</u>	<u>37%</u>
<u>2005</u>	<u>33%</u>
<u>2004</u>	<u>31%</u>
<u>2003</u>	<u>29%</u>
<u>2002</u>	<u>27%</u>
<u>2001</u>	<u>23%</u>
<u>2000</u>	<u>23%</u>
<u>1999</u>	<u>19%</u>
<u>1998</u>	<u>20%</u>
<u>1997</u>	<u>20%</u>
<u>1996</u>	<u>20%</u>
<u>1995</u>	<u>16%</u>
<u>1994 and older</u>	<u>16%</u>

(e) For rental video tapes and digital video disks, the following trended depreciation schedule will be used:

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD</u>
<del>2011</del>	<del>25%</del>
<del>2010</del>	<del>15%</del>
<del>2009 and older</del>	<del>10%</del>
<u>2012</u>	<u>25%</u>
<u>2011</u>	<u>15%</u>
<u>2010 and older</u>	<u>10%</u>

(2) For all other leased property that is not rented on an hourly, daily, weekly, semimonthly, or monthly basis, the valuation procedures shall be the same as other like personal property.

(3) When a special mobile permit (SM plate), as defined in 61-4-101(66), MCA, is purchased for lease or rental equipment, the equipment will be classified and valued the same as other SM equipment in class eight.

(4) All leased and rental property not exempt under 15-6-202(4) or 15-6-219(5) or ~~15-6-202(4)~~, MCA, will be assessed and taxed as class eight property.

(5) This rule is effective for tax years beginning after December 31, ~~2011~~ 2012.

AUTH: 15-1-201, 15-23-108, MCA

IMP: 15-6-135, 15-6-138, 15-6-202, 15-6-207, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.113, to update the trended depreciation schedules in the rule.

The department further proposes to amend the rule to correct the numerical order of the statutes referenced in (1) and (4), and to update the implementing citations to include 15-6-202, MCA.

42.21.123 FARM MACHINERY AND EQUIPMENT (1) through (7) remain the same.

(8) The trended depreciation schedule referred to in (2) through (6) is listed below and shall be used for tax year ~~2012~~ 2013. The schedule is derived by using the guidebook listed in (2) as the data base. The values derived through use of the

trended depreciation schedule will approximate average wholesale value.

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD AVERAGE WHOLESALE</u>
2012	80%
2011	75%
2010	68%
2009	63%
2008	62%
2007	58%
2006	54%
2005	49%
2004	48%
2003	43%
2002	38%
2001	35%
2000	33%
1999	30%
1998	29%
1997	28%
1996 and older	23%
<u>2013</u>	<u>80%</u>
<u>2012</u>	<u>75%</u>
<u>2011</u>	<u>68%</u>
<u>2010</u>	<u>65%</u>
<u>2009</u>	<u>58%</u>
<u>2008</u>	<u>56%</u>
<u>2007</u>	<u>54%</u>
<u>2006</u>	<u>51%</u>
<u>2005</u>	<u>47%</u>
<u>2004</u>	<u>45%</u>
<u>2003</u>	<u>41%</u>
<u>2002</u>	<u>36%</u>
<u>2001</u>	<u>33%</u>
<u>2000</u>	<u>31%</u>
<u>1999</u>	<u>28%</u>
<u>1998</u>	<u>29%</u>
<u>1997 and older</u>	<u>22%</u>

(9) remains the same.

(10) This rule is effective for tax years beginning after December 31, ~~2011~~  
2012.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.123, to update the trended depreciation schedule in the rule.

42.21.131 HEAVY EQUIPMENT (1) remains the same.

(2) For all heavy equipment which cannot be valued under (1), the department shall try to ascertain the original FOB (free on board value) through old heavy equipment valuation guidebooks. If an original FOB cannot be ascertained, the department may use trending to determine the FOB. The FOB or "trended" FOB will be used in conjunction with the depreciation schedule in (5) to arrive at a value which approximates wholesale value. The trend factors are calculated using the most recent Contractor's Equipment factors available in the Marshall & Swift Valuation Service Manual Guide for the year of assessment. The Marshall & Swift Valuation Service Manual Guide, published by Marshall and Swift Publication Company, 915 Wilshire Boulevard, 8th Floor, P.O. Box 26307, Los Angeles, California 90026-0307, is adopted by reference.

(3) and (4) remain the same.

(5) The trended depreciation schedule referred to in (2), (3), and (4) is listed below and shall be used for tax year ~~2012~~ 2013. The values derived through the use of these percentages approximate the "quick sale" values as calculated in the guidebooks listed in (1).

HEAVY EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ACQUIRED</u>	<u>TRENDED % GOOD WHOLESALE</u>
2012	80%
2011	65%
2010	58%
2009	51%
2008	45%
2007	42%
2006	35%
2005	31%
2004	30%
2003	30%
2002	26%
2001	23%



2000	19%
1999	20%
1998	19%
1997	20%
1996	15%
1995	16%
1994	16%
1993 and older	16%
<u>2013</u>	<u>80%</u>
<u>2012</u>	<u>65%</u>
<u>2011</u>	<u>59%</u>
<u>2010</u>	<u>56%</u>
<u>2009</u>	<u>48%</u>
<u>2008</u>	<u>44%</u>
<u>2007</u>	<u>43%</u>
<u>2006</u>	<u>37%</u>
<u>2005</u>	<u>33%</u>
<u>2004</u>	<u>31%</u>
<u>2003</u>	<u>29%</u>
<u>2002</u>	<u>27%</u>
<u>2001</u>	<u>23%</u>
<u>2000</u>	<u>23%</u>
<u>1999</u>	<u>19%</u>
<u>1998</u>	<u>20%</u>
<u>1997</u>	<u>20%</u>
<u>1996</u>	<u>20%</u>
<u>1995</u>	<u>16%</u>
<u>1994 and older</u>	<u>16%</u>

(6) This rule is effective for tax years beginning after December 31, 2014 2012, and applies to all heavy equipment.

AUTH: 15-1-201, 15-23-108, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.131, to update the

trended depreciation schedule in the rule.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (2), in order to provide consistency throughout the trended depreciation rules in Title 42.

42.21.137 SEISMOGRAPH UNITS AND ALLIED EQUIPMENT (1) remains the same.

(2) The department shall prepare a five-year trended depreciation schedule for seismograph units and a five-year trended depreciation schedule for all other allied seismograph equipment. Trend factors and depreciation factors published by "~~Marshall and Swift Publication Company~~" in the Marshall & Swift Valuation Service Guide will be used to develop the trended depreciation schedules. The trend factors shall be the most recent available from the "Chemical Industry Cost Indexes" listed in the above publication. The "% good" for seismograph units and other allied seismograph equipment less than one year old shall be 100 percent and the "% good" for equipment shall be 5 percent if acquired in 2005 and prior.

(3) remains the same.

(4) The trended depreciation schedules referred to in (1) through (3) are listed below and shall be used for tax year ~~2012~~ 2013.

SEISMOGRAPH UNIT

<u>YEAR NEW/ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>	<u>WHOLESALE FACTOR</u>	<u>WHOLESALE % GOOD</u>
2012	100%	1.000	100%	80%	80%
2011	85%	1.000	85%	80%	68%
2010	69%	1.021	70%	80%	56%
2009	52%	1.006	52%	80%	42%
2008	34%	1.042	35%	80%	28%
2007	23%	1.089	25%	80%	20%
2006	20%	1.53	23%	80%	18%
2005 and older	5%				5%
<u>2013</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>	<u>80%</u>	<u>80%</u>
<u>2012</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>	<u>80%</u>	<u>68%</u>
<u>2011</u>	<u>69%</u>	<u>1.026</u>	<u>71%</u>	<u>80%</u>	<u>57%</u>
<u>2010</u>	<u>52%</u>	<u>1.054</u>	<u>55%</u>	<u>80%</u>	<u>44%</u>
<u>2009</u>	<u>34%</u>	<u>1.039</u>	<u>35%</u>	<u>80%</u>	<u>28%</u>
<u>2008</u>	<u>23%</u>	<u>1.076</u>	<u>25%</u>	<u>80%</u>	<u>20%</u>
<u>2007-2006</u>	<u>20%</u>	<u>1.124</u>	<u>22%</u>	<u>80%</u>	<u>18%</u>
<u>2005 and older</u>	<u>5%</u>				<u>5%</u>

SEISMOGRAPH ALLIED EQUIPMENT

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2012	100%	1.000	100%

2014	85%	1.000	85%
2010	69%	1.024	70%
2009	52%	1.006	52%
2008	34%	1.042	35%
2007	23%	1.089	25%
2006	20%	1.153	23%
2005 and older	5%		5%
<u>2013</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2012</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2011</u>	<u>69%</u>	<u>1.026</u>	<u>71%</u>
<u>2010</u>	<u>52%</u>	<u>1.054</u>	<u>55%</u>
<u>2009</u>	<u>34%</u>	<u>1.039</u>	<u>35%</u>
<u>2008</u>	<u>23%</u>	<u>1.076</u>	<u>25%</u>
<u>2007-2006</u>	<u>20%</u>	<u>1.124</u>	<u>22%</u>
<u>2005 and older</u>	<u>5%</u>		<u>5%</u>

(5) This rule is effective for tax years beginning after December 31, 2014  
2012.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.137, to update the trended depreciation schedules in the rule.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (2), in order to provide consistency throughout the trended depreciation rules in Title 42.

#### 42.21.138 OIL AND GAS FIELD MACHINERY AND EQUIPMENT

(1) remains the same.

(2) The department shall prepare a 15-year trended depreciation schedule for oil and gas field machinery and equipment. Trend factors and depreciation factors published by "Marshall and Swift Publication Company" in the Marshall & Swift Valuation Service Guide will be used to develop the trended depreciation schedules. The trend factors shall be the most recent available.

(3) The trended depreciation schedule referred to in (1) and (2) is listed

below and shall be used for tax year ~~2012~~ 2013.

OIL AND GAS FIELD PRODUCTION  
EQUIPMENT TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2012	100%	1.000	100%
2011	95%	1.000	95%
2010	90%	1.024	92%
2009	85%	1.006	86%
2008	79%	1.042	82%
2007	73%	1.089	79%
2006	68%	1.153	78%
2005	62%	1.211	75%
2004	55%	1.314	72%
2003	49%	1.360	67%
2002	43%	1.387	60%
2001	37%	1.395	52%
2000	31%	1.408	44%
1999	26%	1.434	37%
1998	23%	1.438	33%
1997 and older	20%	1.453	29%
<u>2013</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2012</u>	<u>95%</u>	<u>1.000</u>	<u>95%</u>
<u>2011</u>	<u>90%</u>	<u>1.026</u>	<u>92%</u>
<u>2010</u>	<u>85%</u>	<u>1.054</u>	<u>90%</u>
<u>2009</u>	<u>79%</u>	<u>1.039</u>	<u>82%</u>
<u>2008</u>	<u>73%</u>	<u>1.076</u>	<u>79%</u>
<u>2007</u>	<u>68%</u>	<u>1.124</u>	<u>76%</u>
<u>2006</u>	<u>62%</u>	<u>1.191</u>	<u>74%</u>
<u>2005</u>	<u>55%</u>	<u>1.251</u>	<u>69%</u>
<u>2004</u>	<u>49%</u>	<u>1.357</u>	<u>66%</u>
<u>2003</u>	<u>43%</u>	<u>1.404</u>	<u>60%</u>
<u>2002</u>	<u>37%</u>	<u>1.433</u>	<u>53%</u>
<u>2001</u>	<u>31%</u>	<u>1.441</u>	<u>45%</u>
<u>2000</u>	<u>26%</u>	<u>1.454</u>	<u>38%</u>
<u>1999</u>	<u>23%</u>	<u>1.478</u>	<u>34%</u>
<u>1998 and older</u>	<u>20%</u>	<u>1.485</u>	<u>30%</u>

(4) and (5) remain the same.

(6) This rule is effective for tax years beginning after December 31, ~~2011~~ 2012.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-213, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.138, to update the trended depreciation schedule in the rule.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (2), in order to provide consistency throughout the trended depreciation rules in Title 42.

42.21.139 WORK-OVER AND SERVICE RIGS (1) remains the same.

(2) The department shall prepare a ten-year trended depreciation schedule for work-over and service rigs. The trended depreciation schedule shall be derived from depreciation factors published by "~~Marshall and Swift Publication Company~~" in the Marshall & Swift Valuation Service Guide. The "% good" for work-over and service rigs less than one year old shall be 100 percent.

(3) and (4) remain the same.

(5) The trended depreciation schedule referred to in (2) and (4) is listed below and shall be used for tax year ~~2012~~ 2013.

SERVICE AND WORKOVER RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR/NEW ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>WHOLESALE FACTOR</u>	<u>TRENDED WHOLESALE % GOOD</u>
2012	100%	1.000	80%	80%
2011	92%	1.000	80%	74%
2010	84%	1.021	80%	69%
2009	76%	1.006	80%	61%
2008	67%	1.042	80%	56%
2007	58%	1.089	80%	51%
2006	49%	1.153	80%	45%
2005	39%	1.211	80%	38%
2004	30%	1.314	80%	32%
2003	24%	1.360	80%	26%
2002 and older	20%	1.387	80%	22%
<u>2013</u>	<u>100%</u>	<u>1.000</u>	<u>80%</u>	<u>80%</u>
<u>2012</u>	<u>92%</u>	<u>1.000</u>	<u>80%</u>	<u>74%</u>
<u>2011</u>	<u>84%</u>	<u>1.026</u>	<u>80%</u>	<u>69%</u>

<u>2010</u>	<u>76%</u>	<u>1.054</u>	<u>80%</u>	<u>64%</u>
<u>2009</u>	<u>67%</u>	<u>1.039</u>	<u>80%</u>	<u>56%</u>
<u>2008</u>	<u>58%</u>	<u>1.076</u>	<u>80%</u>	<u>50%</u>
<u>2007</u>	<u>49%</u>	<u>1.124</u>	<u>80%</u>	<u>44%</u>
<u>2006</u>	<u>39%</u>	<u>1.191</u>	<u>80%</u>	<u>37%</u>
<u>2005</u>	<u>30%</u>	<u>1.251</u>	<u>80%</u>	<u>30%</u>
<u>2004</u>	<u>24%</u>	<u>1.357</u>	<u>80%</u>	<u>26%</u>
<u>2003 and older</u>	<u>20%</u>	<u>1.404</u>	<u>80%</u>	<u>22%</u>

(6) This rule is effective for tax years beginning after December 31, ~~2011~~ 2012.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.139, to update the trended depreciation schedule in the rule.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (2), in order to provide consistency throughout the trended depreciation rules in Title 42.

42.21.140 OIL DRILLING RIGS (1) remains the same.

(2) The department shall prepare a ten-year trended depreciation schedule for oil drilling rigs. The trended depreciation schedule shall be derived from depreciation factors published by ~~Marshall and Swift Publication Company~~ in the Marshall & Swift Valuation Service Guide. The "% good" for all drill rigs less than one year old shall be 100 percent. The trended depreciation schedule for tax year ~~2012~~ 2013 is listed below.

DRILL RIG TRENDED DEPRECIATION SCHEDULE

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2012	100%	1.000	100%
2011	92%	1.000	92%
2010	84%	1.021	86%
2009	76%	1.006	76%

2008	67%	1.042	70%
2007	58%	1.089	63%
2006	49%	1.153	57%
2005	39%	1.211	47%
2004	30%	1.314	39%
2003	24%	1.360	33%
2002 and older	20%	1.387	28%
<u>2013</u>	<u>100%</u>	<u>1.000</u>	<u>100%</u>
<u>2012</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2011</u>	<u>84%</u>	<u>1.026</u>	<u>86%</u>
<u>2010</u>	<u>76%</u>	<u>1.054</u>	<u>80%</u>
<u>2009</u>	<u>67%</u>	<u>1.039</u>	<u>70%</u>
<u>2008</u>	<u>58%</u>	<u>1.076</u>	<u>62%</u>
<u>2007</u>	<u>49%</u>	<u>1.124</u>	<u>55%</u>
<u>2006</u>	<u>39%</u>	<u>1.191</u>	<u>46%</u>
<u>2005</u>	<u>30%</u>	<u>1.251</u>	<u>38%</u>
<u>2004</u>	<u>24%</u>	<u>1.357</u>	<u>33%</u>
<u>2003 and older</u>	<u>20%</u>	<u>1.404</u>	<u>28%</u>

(3) remains the same.

(4) This rule is effective for tax years beginning after December 31, ~~2011~~  
2012.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.140, to update the trended depreciation schedule in the rule.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (2), in order to provide consistency throughout the trended depreciation rules in Title 42.

42.21.151 TELEVISION CABLE SYSTEMS (1) remains the same.

(2) The average market value for the dishes and towers will be determined by using a five-year trended depreciation schedule on dishes and ten-year trended depreciation schedule on towers. Both the trend factors and the depreciation tables

will be derived from the Marshall & Swift Valuation Service Guide, as published by the Marshall and Swift Publication Company, 915 Wilshire Boulevard, 8th Floor, P.O. Box 26307, Los Angeles, California 90026-0307. The trend factors shall be the most recent available from the "Average of all Indexes" listed in the above publication.

(3) remains the same.

(4) The trended depreciation schedules referred to in (2) and (3) are listed below and shall be in effect for tax year ~~2012~~ 2013.

TABLE 1: FIVE-YEAR "DISHES"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2011	85%	1.000	85%
2010	69%	1.025	71%
2009	52%	1.017	53%
2008	34%	1.046	36%
2007 and older	20%	1.087	22%
<u>2012</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2011</u>	<u>69%</u>	<u>1.027</u>	<u>71%</u>
<u>2010</u>	<u>52%</u>	<u>1.059</u>	<u>55%</u>
<u>2009</u>	<u>34%</u>	<u>1.051</u>	<u>36%</u>
<u>2008 and older</u>	<u>20%</u>	<u>1.082</u>	<u>22%</u>

TABLE 2: TEN-YEAR "TOWERS"

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2011	92%	1.000	92%
2010	84%	1.025	86%
2009	76%	1.017	77%
2008	67%	1.046	70%
2007	58%	1.087	63%
2006	49%	1.147	56%
2005	39%	1.200	47%
2004	30%	1.290	39%
2003	24%	1.335	32%
2002 and older	20%	1.357	27%
<u>2012</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2011</u>	<u>84%</u>	<u>1.027</u>	<u>86%</u>
<u>2010</u>	<u>76%</u>	<u>1.059</u>	<u>81%</u>
<u>2009</u>	<u>67%</u>	<u>1.051</u>	<u>70%</u>
<u>2008</u>	<u>58%</u>	<u>1.082</u>	<u>63%</u>
<u>2007</u>	<u>49%</u>	<u>1.124</u>	<u>55%</u>
<u>2006</u>	<u>39%</u>	<u>1.186</u>	<u>46%</u>
<u>2005</u>	<u>30%</u>	<u>1.241</u>	<u>37%</u>



<u>2004</u>	<u>24%</u>	<u>1.334</u>	<u>32%</u>
<u>2003 and older</u>	<u>20%</u>	<u>1.380</u>	<u>28%</u>

(5) This rule is effective for tax years beginning after December 31, 2011, 2012.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.2.151, to update the trended depreciation schedules in the rule.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (2), in order to provide consistency throughout the trended depreciation rules in Title 42.

42.21.153 SKI LIFT EQUIPMENT (1) remains the same.

(2) The "average of all" industry trend factors as indicated by the Marshall & Swift Valuation Service Guide shall be used.

(3) The depreciation schedules shall be determined by the life expectancy of the equipment and will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to the technological changes during the life expectancy period.

DEPRECIATION TABLE FOR SKI LIFT EQUIPMENT

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2011	92%	1.000	92%
2010	84%	1.025	86%
2009	76%	1.017	77%
2008	67%	1.046	70%
2007	58%	1.087	63%
2006	49%	1.147	56%
2005	39%	1.200	47%
2004	30%	1.290	39%
2003	24%	1.335	32%
2002 and older	20%	1.357	27%

<u>2012</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2011</u>	<u>84%</u>	<u>1.027</u>	<u>86%</u>
<u>2010</u>	<u>76%</u>	<u>1.059</u>	<u>81%</u>
<u>2009</u>	<u>67%</u>	<u>1.051</u>	<u>70%</u>
<u>2008</u>	<u>58%</u>	<u>1.082</u>	<u>63%</u>
<u>2007</u>	<u>49%</u>	<u>1.124</u>	<u>55%</u>
<u>2006</u>	<u>39%</u>	<u>1.186</u>	<u>46%</u>
<u>2005</u>	<u>30%</u>	<u>1.241</u>	<u>37%</u>
<u>2004</u>	<u>24%</u>	<u>1.334</u>	<u>32%</u>
<u>2003 and older</u>	<u>20%</u>	<u>1.380</u>	<u>28%</u>

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

(4) This methodology is effective for tax years beginning after December 31, 2011 2012.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.153, to update the trended depreciation schedule in the rule.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (2), in order to provide consistency throughout the trended depreciation rules in Title 42.

42.21.155 DEPRECIATION SCHEDULES (1) Trended depreciation schedules of four, five, and ten years have been established for each category of property. The number of years corresponds to the useful life of the property taking into account physical obsolescence. The trended depreciation schedules reflect the remaining life of the property over the term of years assigned with a 5 percent to 20 percent residual. The five- and ten-year depreciation schedules "% good" numbers were extracted from the ~~Marshall and Swift Publication~~ Marshall & Swift Valuation Service Guide, "Fixtures and Equipment Table." The four-year table was derived from consultation with industry representatives. "Remaining Life" is a form of depreciation.

(2) The trended depreciation schedules for tax year ~~2012~~ 2013 are listed below. The categories are explained in ARM 42.21.156. The trend factors are derived according to ARM 42.21.156 and 42.21.157.

CATEGORY 1

<u>YEAR NEW/ ACQUIRED</u>	<u>%GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2011	70%	1.000	70%
2010	45%	0.917	41%
2009	20%	0.884	18%
2008 and older	10%	0.824	8%
<u>2012</u>	<u>70%</u>	<u>1.000</u>	<u>70%</u>
<u>2011</u>	<u>45%</u>	<u>0.916</u>	<u>41%</u>
<u>2010</u>	<u>20%</u>	<u>0.843</u>	<u>17%</u>
<u>2009 and older</u>	<u>10%</u>	<u>0.813</u>	<u>8%</u>

CATEGORY 2

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2011	85%	1.000	85%
2010	69%	1.004	69%
2009	52%	0.964	50%
2008	34%	1.039	35%
2007 and older	20%	1.062	21%
<u>2012</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2011</u>	<u>69%</u>	<u>1.013</u>	<u>70%</u>
<u>2010</u>	<u>52%</u>	<u>1.018</u>	<u>53%</u>
<u>2009</u>	<u>34%</u>	<u>0.974</u>	<u>33%</u>
<u>2008 and older</u>	<u>20%</u>	<u>1.053</u>	<u>21%</u>

CATEGORY 3

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2011	85%	1.000	85%
2010	69%	0.964	67%
2009	52%	0.947	49%
2008	34%	0.915	31%
2007 and older	20%	0.826	17%
<u>2012</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2011</u>	<u>69%</u>	<u>0.971</u>	<u>67%</u>
<u>2010</u>	<u>52%</u>	<u>0.937</u>	<u>49%</u>

<u>2009</u>	<u>34%</u>	<u>0.920</u>	<u>31%</u>
<u>2008 and older</u>	<u>20%</u>	<u>0.889</u>	<u>18%</u>

CATEGORY 4

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2011</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2010</u>	<u>69%</u>	<u>0.988</u>	<u>68%</u>
<u>2009</u>	<u>52%</u>	<u>0.978</u>	<u>51%</u>
<u>2008</u>	<u>34%</u>	<u>0.965</u>	<u>33%</u>
<u>2007 and older</u>	<u>20%</u>	<u>0.945</u>	<u>19%</u>
<u>2012</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2011</u>	<u>69%</u>	<u>0.997</u>	<u>69%</u>
<u>2010</u>	<u>52%</u>	<u>0.984</u>	<u>51%</u>
<u>2009</u>	<u>34%</u>	<u>0.973</u>	<u>33%</u>
<u>2008 and older</u>	<u>20%</u>	<u>0.961</u>	<u>19%</u>

CATEGORY 5

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2011</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2010</u>	<u>69%</u>	<u>1.009</u>	<u>70%</u>
<u>2009</u>	<u>52%</u>	<u>1.014</u>	<u>53%</u>
<u>2008</u>	<u>34%</u>	<u>1.058</u>	<u>36%</u>
<u>2007 and older</u>	<u>20%</u>	<u>1.073</u>	<u>21%</u>
<u>2012</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2011</u>	<u>69%</u>	<u>1.030</u>	<u>71%</u>
<u>2010</u>	<u>52%</u>	<u>1.039</u>	<u>54%</u>
<u>2009</u>	<u>34%</u>	<u>1.044</u>	<u>36%</u>
<u>2008 and older</u>	<u>20%</u>	<u>1.090</u>	<u>22%</u>

CATEGORY 6

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
<u>2011</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2010</u>	<u>69%</u>	<u>1.025</u>	<u>71%</u>
<u>2009</u>	<u>52%</u>	<u>1.044</u>	<u>54%</u>
<u>2008</u>	<u>34%</u>	<u>1.049</u>	<u>36%</u>
<u>2007 and older</u>	<u>20%</u>	<u>1.080</u>	<u>22%</u>
<u>2012</u>	<u>85%</u>	<u>1.000</u>	<u>85%</u>
<u>2011</u>	<u>69%</u>	<u>1.023</u>	<u>71%</u>

<u>2010</u>	<u>52%</u>	<u>1.058</u>	<u>55%</u>
<u>2009</u>	<u>34%</u>	<u>1.078</u>	<u>37%</u>
<u>2008 and older</u>	<u>20%</u>	<u>1.082</u>	<u>22%</u>

CATEGORY 7

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2011	92%	1.000	92%
2010	84%	1.016	85%
2009	76%	1.010	77%
2008	67%	1.042	70%
2007	58%	1.061	62%
2006	49%	1.084	53%
2005	39%	1.117	44%
2004	30%	1.146	34%
2003	24%	1.151	28%
<u>2002 and older</u>	<u>20%</u>	<u>1.150</u>	<u>23%</u>

<u>2012</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2011</u>	<u>84%</u>	<u>1.030</u>	<u>87%</u>
<u>2010</u>	<u>76%</u>	<u>1.047</u>	<u>80%</u>
<u>2009</u>	<u>67%</u>	<u>1.041</u>	<u>70%</u>
<u>2008</u>	<u>58%</u>	<u>1.074</u>	<u>62%</u>
<u>2007</u>	<u>49%</u>	<u>1.093</u>	<u>54%</u>
<u>2006</u>	<u>39%</u>	<u>1.117</u>	<u>44%</u>
<u>2005</u>	<u>30%</u>	<u>1.151</u>	<u>35%</u>
<u>2004</u>	<u>24%</u>	<u>1.181</u>	<u>28%</u>
<u>2003 and older</u>	<u>20%</u>	<u>1.186</u>	<u>24%</u>

CATEGORY 8

<u>YEAR NEW/ ACQUIRED</u>	<u>% GOOD</u>	<u>TREND FACTOR</u>	<u>TRENDED % GOOD</u>
2011	92%	1.000	92%
2010	84%	1.011	85%
2009	76%	1.016	77%
2008	67%	1.080	72%
2007	58%	1.103	64%
2006	49%	1.135	56%
2005	39%	1.171	46%
2004	30%	1.216	36%
2003	24%	1.226	29%
<u>2002 and older</u>	<u>20%</u>	<u>1.237</u>	<u>25%</u>
<u>2012</u>	<u>92%</u>	<u>1.000</u>	<u>92%</u>
<u>2011</u>	<u>84%</u>	<u>1.029</u>	<u>86%</u>

<u>2010</u>	<u>76%</u>	<u>1.039</u>	<u>79%</u>
<u>2009</u>	<u>67%</u>	<u>1.043</u>	<u>70%</u>
<u>2008</u>	<u>58%</u>	<u>1.109</u>	<u>64%</u>
<u>2007</u>	<u>49%</u>	<u>1.133</u>	<u>56%</u>
<u>2006</u>	<u>39%</u>	<u>1.165</u>	<u>45%</u>
<u>2005</u>	<u>30%</u>	<u>1.203</u>	<u>36%</u>
<u>2004</u>	<u>24%</u>	<u>1.249</u>	<u>30%</u>
<u>2003 and older</u>	<u>20%</u>	<u>1.259</u>	<u>25%</u>

(3) This rule is effective for tax years beginning after December 31, ~~2011~~ 2012.

AUTH: 15-1-201, MCA

IMP: 15-6-135, 15-6-138, 15-6-207, 15-6-219, MCA

REASONABLE NECESSITY: The department determines the market value of personal property by using the guides and valuation manuals listed in its rules and then applying the trended depreciation schedules as published in its rules. Personal property is valued annually, and because the trend tables used to value personal property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trended depreciation schedules provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.21.155, to update the trended depreciation schedules in the rule.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (1), in order to provide consistency throughout the trended depreciation rules in Title 42.

42.22.1307 TREND FACTORS (1) The trending factors for all property other than land or improvements to land shall be published annually by the department. These factors will be taken from the Marshall & Swift Valuation Service Guide except in those instances when the taxpayer can demonstrate to the department that another source of information will provide a more reliable indication of replacement/reproduction cost and thus the resulting "market value" for the industry as a whole.

AUTH: 15-1-201, MCA

IMP: 15-8-111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.22.1307 to revise the title of the appraisal guide being referenced, in order to provide consistency throughout the trended depreciation rules in Title 42.

42.22.1308 DEPRECIATION SCHEDULES (1) Depreciation schedules for

all property, other than land or improvements to land, shall be published annually by the department. These depreciation schedules will be an expanded version of the depreciation schedule provided by the Marshall & Swift Valuation Service Guide. These depreciation rates will normally compensate for the loss in value due to ordinary wear and tear, offset by reasonable maintenance, and ordinary functional obsolescence due to technological changes within the process during the life expectancy period.

AUTH: 15-1-201, MCA

IMP: 15-8-111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.22.1308 to revise the title of the appraisal guide being referenced, in order to provide consistency throughout the trended depreciation rules in Title 42.

42.22.1311 INDUSTRIAL MACHINERY AND EQUIPMENT TREND

FACTORS (1) The trend factors will be used to value industrial machinery and equipment for ad valorem tax purposes pursuant to ARM 42.22.1306. The department uses annual cost indexes from the Marshall & Swift Valuation Service Guide. The current index is divided by the annual index for each year to arrive at a trending factor. Each major industry has its own trend table. Where no index existed in the Marshall & Swift Valuation Service Guide for a particular industry, that industry was grouped with other industries using similar equipment. The department will utilize the machinery and equipment trend factors that are set forth in the following tables:

(2) Life expectancies for industrial machinery and equipment are shown in the trend table below.

~~2006~~ 2013 INDUSTRIAL MACHINERY AND EQUIPMENT TREND FACTORS

(a) through (c) remain the same.

(3) Tables 1 through 32 represent the yearly trend factors for each of the categories.

<u>YEAR</u>	<u>TABLE 1</u> <u>Airplane Mfg.</u>	<u>TABLE 2</u> <u>Baking</u>	<u>TABLE 3</u> <u>Bottling</u>	<u>TABLE 4</u> <u>Brew/Dis.</u>	<u>TABLE 5</u> <u>Candy Confect.</u>
2011	1.000	1.000	1.000	1.000	1.000
2010	1.029	1.026	1.026	1.022	1.025
2009	1.012	1.018	1.016	1.015	1.019
2008	1.041	1.043	1.042	1.044	1.044
2007	1.084	1.085	1.088	1.091	1.086
2006	1.144	1.162	1.153	1.156	1.166
2005	1.203	1.215	1.213	1.215	1.219
2004	1.303	1.307	1.315	1.313	1.310
2003	1.352	1.356	1.363	1.358	1.358
2002	1.377	1.379	1.388	1.382	1.381

2001	1.382	1.388	1.394	1.391	1.389
2000	1.392	1.404	1.407	1.406	1.406
1999	1.417	1.432	1.434	1.432	1.433
1998	1.419	1.437	1.437	1.440	1.438
1997	1.430	1.451	1.447	1.454	1.454
1996	1.447	1.476	1.470	1.478	1.480
1995	1.467	1.498	1.492	1.506	1.503
1994	1.525	1.560	1.551	1.562	1.565
1993	1.565	1.608	1.592	1.599	1.613
1992	1.589	1.638	1.618	1.624	1.643

<u>2012</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2011</u>	<u>1.029</u>	<u>1.027</u>	<u>1.027</u>	<u>1.025</u>	<u>1.027</u>
<u>2010</u>	<u>1.068</u>	<u>1.060</u>	<u>1.060</u>	<u>1.053</u>	<u>1.060</u>
<u>2009</u>	<u>1.050</u>	<u>1.052</u>	<u>1.050</u>	<u>1.047</u>	<u>1.054</u>
<u>2008</u>	<u>1.080</u>	<u>1.078</u>	<u>1.077</u>	<u>1.077</u>	<u>1.079</u>
<u>2007</u>	<u>1.124</u>	<u>1.121</u>	<u>1.125</u>	<u>1.125</u>	<u>1.123</u>
<u>2006</u>	<u>1.187</u>	<u>1.201</u>	<u>1.192</u>	<u>1.192</u>	<u>1.205</u>
<u>2005</u>	<u>1.248</u>	<u>1.256</u>	<u>1.254</u>	<u>1.253</u>	<u>1.260</u>
<u>2004</u>	<u>1.352</u>	<u>1.351</u>	<u>1.359</u>	<u>1.354</u>	<u>1.355</u>
<u>2003</u>	<u>1.403</u>	<u>1.402</u>	<u>1.409</u>	<u>1.400</u>	<u>1.403</u>
<u>2002</u>	<u>1.429</u>	<u>1.426</u>	<u>1.434</u>	<u>1.425</u>	<u>1.427</u>
<u>2001</u>	<u>1.434</u>	<u>1.435</u>	<u>1.441</u>	<u>1.434</u>	<u>1.436</u>
<u>2000</u>	<u>1.444</u>	<u>1.451</u>	<u>1.454</u>	<u>1.450</u>	<u>1.453</u>
<u>1999</u>	<u>1.470</u>	<u>1.480</u>	<u>1.482</u>	<u>1.477</u>	<u>1.482</u>
<u>1998</u>	<u>1.472</u>	<u>1.485</u>	<u>1.485</u>	<u>1.485</u>	<u>1.487</u>
<u>1997</u>	<u>1.483</u>	<u>1.500</u>	<u>1.496</u>	<u>1.499</u>	<u>1.503</u>
<u>1996</u>	<u>1.501</u>	<u>1.526</u>	<u>1.519</u>	<u>1.524</u>	<u>1.530</u>
<u>1995</u>	<u>1.522</u>	<u>1.549</u>	<u>1.542</u>	<u>1.552</u>	<u>1.554</u>
<u>1994</u>	<u>1.582</u>	<u>1.612</u>	<u>1.603</u>	<u>1.611</u>	<u>1.618</u>
<u>1993</u>	<u>1.623</u>	<u>1.662</u>	<u>1.646</u>	<u>1.649</u>	<u>1.668</u>

<u>YEAR</u>	<u>TABLE 6</u> <u>Cement Mfg.</u>	<u>TABLE 7</u> <u>Chemical</u> <u>Mfg.</u>	<u>TABLE 8</u> <u>Clay Mfg.</u>	<u>TABLE 9</u> <u>Contractor</u> <u>Eq.</u>	<u>TABLE 10</u> <u>Creamery/Dairy</u>
2011	1.000	1.000	1.000	1.000	1.000
2010	1.021	1.021	1.023	1.022	1.025
2009	1.008	1.006	1.015	1.018	1.021
2008	1.054	1.042	1.062	1.049	1.044
2007	1.101	1.089	1.107	1.082	1.088
2006	1.158	1.153	1.167	1.120	1.164
2005	1.215	1.211	1.222	1.171	1.222
2004	1.321	1.314	1.320	1.251	1.315
2003	1.374	1.360	1.367	1.287	1.361
2002	1.402	1.387	1.394	1.307	1.383



2001	1.411	1.395	1.404	1.317	1.393
2000	1.424	1.408	1.419	1.325	1.408
1999	1.448	1.431	1.443	1.348	1.437
1998	1.454	1.438	1.448	1.359	1.443
1997	1.470	1.453	1.463	1.374	1.457
1996	1.488	1.472	1.486	1.401	1.482
1995	1.515	1.500	1.514	1.424	1.508
1994	1.569	1.556	1.566	1.463	1.571
1993	1.604	1.588	1.603	1.500	1.614
1992	1.629	1.608	1.632	1.541	1.640

<u>2012</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2011</u>	<u>1.032</u>	<u>1.026</u>	<u>1.030</u>	<u>1.030</u>	<u>1.026</u>
<u>2010</u>	<u>1.061</u>	<u>1.054</u>	<u>1.061</u>	<u>1.060</u>	<u>1.059</u>
<u>2009</u>	<u>1.047</u>	<u>1.039</u>	<u>1.053</u>	<u>1.056</u>	<u>1.055</u>
<u>2008</u>	<u>1.095</u>	<u>1.076</u>	<u>1.102</u>	<u>1.087</u>	<u>1.078</u>
<u>2007</u>	<u>1.143</u>	<u>1.124</u>	<u>1.149</u>	<u>1.122</u>	<u>1.124</u>
<u>2006</u>	<u>1.203</u>	<u>1.191</u>	<u>1.211</u>	<u>1.161</u>	<u>1.203</u>
<u>2005</u>	<u>1.263</u>	<u>1.251</u>	<u>1.268</u>	<u>1.214</u>	<u>1.263</u>
<u>2004</u>	<u>1.373</u>	<u>1.357</u>	<u>1.369</u>	<u>1.296</u>	<u>1.359</u>
<u>2003</u>	<u>1.427</u>	<u>1.404</u>	<u>1.418</u>	<u>1.334</u>	<u>1.406</u>
<u>2002</u>	<u>1.456</u>	<u>1.433</u>	<u>1.446</u>	<u>1.355</u>	<u>1.429</u>
<u>2001</u>	<u>1.465</u>	<u>1.441</u>	<u>1.456</u>	<u>1.365</u>	<u>1.439</u>
<u>2000</u>	<u>1.480</u>	<u>1.454</u>	<u>1.472</u>	<u>1.373</u>	<u>1.455</u>
<u>1999</u>	<u>1.504</u>	<u>1.478</u>	<u>1.497</u>	<u>1.397</u>	<u>1.484</u>
<u>1998</u>	<u>1.511</u>	<u>1.485</u>	<u>1.502</u>	<u>1.409</u>	<u>1.490</u>
<u>1997</u>	<u>1.527</u>	<u>1.501</u>	<u>1.518</u>	<u>1.425</u>	<u>1.505</u>
<u>1996</u>	<u>1.546</u>	<u>1.520</u>	<u>1.541</u>	<u>1.453</u>	<u>1.531</u>
<u>1995</u>	<u>1.574</u>	<u>1.549</u>	<u>1.571</u>	<u>1.476</u>	<u>1.558</u>
<u>1994</u>	<u>1.630</u>	<u>1.607</u>	<u>1.625</u>	<u>1.517</u>	<u>1.623</u>
<u>1993</u>	<u>1.666</u>	<u>1.639</u>	<u>1.663</u>	<u>1.555</u>	<u>1.667</u>

<u>YEAR</u>	<u>TABLE 11</u> <u>Elec. Pwr.</u> <u>Eq.</u>	<u>TABLE 12</u> <u>Elec. Eq.</u> <u>Mfg.</u>	<u>TABLE 13</u> <u>Cannery/Fish</u>	<u>TABLE 14</u> <u>Flour, Cer.</u> <u>Feed</u>	<u>TABLE 15</u> <u>Cannery/Fruit</u>
2011	1.000	1.000	1.000	1.000	1.000
2010	1.046	1.039	1.026	1.026	1.026
2009	1.037	1.025	1.016	1.017	1.021
2008	1.041	1.042	1.043	1.044	1.042
2007	1.099	1.093	1.085	1.089	1.081
2006	1.189	1.169	1.163	1.160	1.151
2005	1.276	1.241	1.215	1.219	1.202
2004	1.396	1.353	1.310	1.316	1.288
2003	1.460	1.410	1.360	1.364	1.336
2002	1.484	1.434	1.384	1.387	1.358
2001	1.478	1.433	1.394	1.395	1.367
2000	1.489	1.443	1.408	1.410	1.381

1999	1.519	1.469	1.436	1.438	1.410
1998	1.511	1.464	1.441	1.444	1.415
1997	1.514	1.471	1.456	1.458	1.428
1996	1.522	1.484	1.482	1.480	1.457
1995	1.535	1.501	1.504	1.504	1.476
1994	1.616	1.573	1.566	1.564	1.532
1993	1.649	1.611	1.616	1.606	1.585
1992	1.660	1.628	1.648	1.632	1.622

<u>2012</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2011</u>	<u>1.025</u>	<u>1.027</u>	<u>1.028</u>	<u>1.028</u>	<u>1.026</u>
<u>2010</u>	<u>1.081</u>	<u>1.077</u>	<u>1.061</u>	<u>1.061</u>	<u>1.059</u>
<u>2009</u>	<u>1.073</u>	<u>1.063</u>	<u>1.052</u>	<u>1.052</u>	<u>1.055</u>
<u>2008</u>	<u>1.077</u>	<u>1.080</u>	<u>1.080</u>	<u>1.080</u>	<u>1.076</u>
<u>2007</u>	<u>1.136</u>	<u>1.133</u>	<u>1.123</u>	<u>1.126</u>	<u>1.116</u>
<u>2006</u>	<u>1.230</u>	<u>1.212</u>	<u>1.203</u>	<u>1.200</u>	<u>1.189</u>
<u>2005</u>	<u>1.320</u>	<u>1.287</u>	<u>1.258</u>	<u>1.261</u>	<u>1.241</u>
<u>2004</u>	<u>1.444</u>	<u>1.402</u>	<u>1.356</u>	<u>1.361</u>	<u>1.331</u>
<u>2003</u>	<u>1.510</u>	<u>1.462</u>	<u>1.407</u>	<u>1.411</u>	<u>1.380</u>
<u>2002</u>	<u>1.535</u>	<u>1.487</u>	<u>1.432</u>	<u>1.435</u>	<u>1.402</u>
<u>2001</u>	<u>1.529</u>	<u>1.485</u>	<u>1.442</u>	<u>1.443</u>	<u>1.412</u>
<u>2000</u>	<u>1.540</u>	<u>1.496</u>	<u>1.457</u>	<u>1.458</u>	<u>1.427</u>
<u>1999</u>	<u>1.571</u>	<u>1.523</u>	<u>1.487</u>	<u>1.488</u>	<u>1.456</u>
<u>1998</u>	<u>1.563</u>	<u>1.518</u>	<u>1.491</u>	<u>1.494</u>	<u>1.461</u>
<u>1997</u>	<u>1.566</u>	<u>1.525</u>	<u>1.506</u>	<u>1.508</u>	<u>1.475</u>
<u>1996</u>	<u>1.575</u>	<u>1.539</u>	<u>1.534</u>	<u>1.531</u>	<u>1.505</u>
<u>1995</u>	<u>1.588</u>	<u>1.556</u>	<u>1.557</u>	<u>1.555</u>	<u>1.524</u>
<u>1994</u>	<u>1.671</u>	<u>1.631</u>	<u>1.620</u>	<u>1.618</u>	<u>1.582</u>
<u>1993</u>	<u>1.706</u>	<u>1.670</u>	<u>1.673</u>	<u>1.662</u>	<u>1.637</u>

<u>YEAR</u>	<u>TABLE 16</u> <u>Packing/</u> <u>Fruit</u>	<u>TABLE 17</u> <u>Laundry/</u> <u>Clean</u>	<u>TABLE 18</u> <u>Logging Eq.</u>	<u>TABLE 19</u> <u>Packing/</u> <u>Meat</u>	<u>TABLE 20</u> <u>Metal</u> <u>Work</u>
2014	1.000	1.000	1.000	1.000	1.000
2010	1.024	1.025	1.022	1.023	1.026
2009	1.023	1.016	1.008	1.018	1.006
2008	1.043	1.050	1.042	1.051	1.044
2007	1.079	1.093	1.079	1.092	1.084
2006	1.130	1.153	1.124	1.163	1.144
2005	1.177	1.204	1.174	1.214	1.195
2004	1.256	1.299	1.262	1.300	1.290
2003	1.300	1.346	1.306	1.344	1.330
2002	1.319	1.371	1.327	1.367	1.352
2001	1.331	1.379	1.335	1.378	1.355
2000	1.342	1.390	1.343	1.392	1.364
1999	1.370	1.416	1.367	1.419	1.383
1998	1.377	1.419	1.372	1.426	1.383

1997	1.388	1.430	1.384	1.442	1.396
1996	1.420	1.453	1.405	1.467	1.414
1995	1.438	1.475	1.425	1.493	1.438
1994	1.483	1.529	1.471	1.549	1.494
1993	1.537	1.570	1.512	1.595	1.532
1992	1.583	1.600	1.546	1.626	1.554
<u>2012</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2011</u>	<u>1.026</u>	<u>1.028</u>	<u>1.029</u>	<u>1.028</u>	<u>1.030</u>
<u>2010</u>	<u>1.056</u>	<u>1.061</u>	<u>1.058</u>	<u>1.058</u>	<u>1.066</u>
<u>2009</u>	<u>1.056</u>	<u>1.051</u>	<u>1.044</u>	<u>1.053</u>	<u>1.045</u>
<u>2008</u>	<u>1.076</u>	<u>1.087</u>	<u>1.078</u>	<u>1.087</u>	<u>1.084</u>
<u>2007</u>	<u>1.114</u>	<u>1.132</u>	<u>1.116</u>	<u>1.129</u>	<u>1.126</u>
<u>2006</u>	<u>1.166</u>	<u>1.193</u>	<u>1.163</u>	<u>1.203</u>	<u>1.189</u>
<u>2005</u>	<u>1.214</u>	<u>1.247</u>	<u>1.215</u>	<u>1.255</u>	<u>1.241</u>
<u>2004</u>	<u>1.296</u>	<u>1.345</u>	<u>1.306</u>	<u>1.345</u>	<u>1.339</u>
<u>2003</u>	<u>1.341</u>	<u>1.394</u>	<u>1.352</u>	<u>1.390</u>	<u>1.382</u>
<u>2002</u>	<u>1.361</u>	<u>1.419</u>	<u>1.373</u>	<u>1.414</u>	<u>1.405</u>
<u>2001</u>	<u>1.373</u>	<u>1.427</u>	<u>1.382</u>	<u>1.425</u>	<u>1.407</u>
<u>2000</u>	<u>1.384</u>	<u>1.439</u>	<u>1.390</u>	<u>1.440</u>	<u>1.417</u>
1999	1.414	1.466	1.415	1.467	1.436
1998	1.420	1.469	1.420	1.475	1.436
1997	1.432	1.480	1.432	1.491	1.450
1996	1.465	1.504	1.455	1.518	1.468
1995	1.483	1.527	1.475	1.544	1.494
1994	1.530	1.583	1.522	1.602	1.552
1993	1.586	1.625	1.565	1.650	1.591

<u>YEAR</u>	<u>TABLE 21</u> <u>Mine</u> <u>Mill</u>	<u>TABLE 22</u> <u>Paint</u> <u>Mfg.</u>	<u>TABLE 23</u> <u>Petroleum</u>	<u>TABLE 24</u> <u>Printing</u>	<u>TABLE 25</u> <u>Paper</u> <u>Mfg.</u>
2011	1.000	1.000	1.000	1.000	1.000
2010	1.025	.996	1.019	1.023	1.025
2009	1.024	.985	1.003	1.013	1.014
2008	1.071	1.019	1.044	1.036	1.047
2007	1.116	1.064	1.096	1.072	1.089
2006	1.165	1.126	1.166	1.131	1.144
2005	1.222	1.182	1.234	1.176	1.196
2004	1.325	1.282	1.341	1.254	1.296
2003	1.375	1.330	1.388	1.291	1.346
2002	1.402	1.358	1.416	1.312	1.372
2001	1.418	1.366	1.430	1.313	1.383
2000	1.428	1.378	1.448	1.324	1.392
1999	1.452	1.404	1.469	1.343	1.420
1998	1.459	1.408	1.476	1.344	1.423
1997	1.475	1.422	1.496	1.351	1.436
1996	1.499	1.443	1.521	1.373	1.464

1995	1.523	1.469	1.552	1.393	1.484
1994	1.570	1.525	1.609	1.445	1.534
1993	1.613	1.563	1.641	1.481	1.581
1992	1.647	1.589	1.657	1.503	1.617
2012	1.000	1.000	1.000	1.000	1.000
2011	1.041	1.029	1.028	1.026	1.028
2010	1.075	1.063	1.054	1.058	1.061
2009	1.074	1.051	1.037	1.047	1.050
2008	1.123	1.087	1.080	1.070	1.084
2007	1.170	1.135	1.134	1.108	1.127
2006	1.222	1.201	1.206	1.169	1.184
2005	1.281	1.261	1.277	1.216	1.238
2004	1.389	1.368	1.387	1.296	1.342
2003	1.442	1.420	1.436	1.334	1.394
2002	1.470	1.449	1.465	1.356	1.420
2001	1.487	1.457	1.480	1.357	1.432
2000	1.498	1.471	1.498	1.369	1.441
1999	1.523	1.498	1.519	1.388	1.470
1998	1.530	1.503	1.527	1.389	1.474
1997	1.546	1.517	1.548	1.397	1.486
1996	1.571	1.540	1.573	1.419	1.516
1995	1.597	1.567	1.605	1.440	1.537
1994	1.646	1.628	1.664	1.494	1.589
1993	1.691	1.668	1.698	1.530	1.637

<u>YEAR</u>	<u>TABLE 26</u>	<u>TABLE 27</u>	<u>TABLE 28</u>	<u>TABLE 29</u>	<u>TABLE 30</u>
	<u>Refrigeration</u>	<u>Rubber</u>	<u>Steam Power</u>	<u>Textile</u>	<u>Warehousing</u>
2011	1.000	1.000	1.000	1.000	1.000
2010	1.027	1.022	1.028	1.018	1.023
2009	1.020	1.007	1.018	1.005	1.017
2008	1.055	1.044	1.053	1.035	1.049
2007	1.100	1.085	1.103	1.071	1.086
2006	1.164	1.143	1.177	1.117	1.126
2005	1.221	1.190	1.240	1.159	1.165
2004	1.316	1.277	1.352	1.241	1.246
2003	1.364	1.322	1.402	1.277	1.290
2002	1.391	1.349	1.430	1.296	1.305
2001	1.403	1.353	1.435	1.302	1.310
2000	1.416	1.364	1.446	1.312	1.317
1999	1.443	1.384	1.469	1.331	1.342
1998	1.449	1.390	1.470	1.333	1.343
1997	1.464	1.405	1.481	1.344	1.348
1996	1.487	1.425	1.496	1.367	1.370
1995	1.514	1.452	1.521	1.386	1.382
1994	1.571	1.503	1.581	1.428	1.422

1993	1.613	1.538	1.615	1.465	1.469
1992	1.644	1.568	1.633	1.494	1.503
<u>2012</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>	<u>1.000</u>
<u>2011</u>	<u>1.029</u>	<u>1.026</u>	<u>1.028</u>	<u>1.025</u>	<u>1.027</u>
<u>2010</u>	<u>1.064</u>	<u>1.056</u>	<u>1.065</u>	<u>1.050</u>	<u>1.057</u>
<u>2009</u>	<u>1.057</u>	<u>1.041</u>	<u>1.055</u>	<u>1.036</u>	<u>1.050</u>
<u>2008</u>	<u>1.093</u>	<u>1.078</u>	<u>1.091</u>	<u>1.068</u>	<u>1.083</u>
<u>2007</u>	<u>1.140</u>	<u>1.121</u>	<u>1.143</u>	<u>1.105</u>	<u>1.122</u>
<u>2006</u>	<u>1.207</u>	<u>1.181</u>	<u>1.220</u>	<u>1.152</u>	<u>1.163</u>
<u>2005</u>	<u>1.265</u>	<u>1.230</u>	<u>1.285</u>	<u>1.196</u>	<u>1.203</u>
<u>2004</u>	<u>1.364</u>	<u>1.319</u>	<u>1.400</u>	<u>1.280</u>	<u>1.288</u>
<u>2003</u>	<u>1.413</u>	<u>1.365</u>	<u>1.452</u>	<u>1.317</u>	<u>1.333</u>
<u>2002</u>	<u>1.442</u>	<u>1.393</u>	<u>1.481</u>	<u>1.336</u>	<u>1.348</u>
<u>2001</u>	<u>1.454</u>	<u>1.397</u>	<u>1.486</u>	<u>1.342</u>	<u>1.353</u>
<u>2000</u>	<u>1.467</u>	<u>1.409</u>	<u>1.499</u>	<u>1.353</u>	<u>1.361</u>
<u>1999</u>	<u>1.496</u>	<u>1.430</u>	<u>1.522</u>	<u>1.373</u>	<u>1.386</u>
<u>1998</u>	<u>1.502</u>	<u>1.436</u>	<u>1.523</u>	<u>1.375</u>	<u>1.388</u>
<u>1997</u>	<u>1.517</u>	<u>1.452</u>	<u>1.534</u>	<u>1.386</u>	<u>1.393</u>
<u>1996</u>	<u>1.542</u>	<u>1.472</u>	<u>1.550</u>	<u>1.410</u>	<u>1.415</u>
<u>1995</u>	<u>1.569</u>	<u>1.500</u>	<u>1.576</u>	<u>1.429</u>	<u>1.428</u>
<u>1994</u>	<u>1.628</u>	<u>1.552</u>	<u>1.638</u>	<u>1.473</u>	<u>1.468</u>
<u>1993</u>	<u>1.671</u>	<u>1.589</u>	<u>1.673</u>	<u>1.511</u>	<u>1.517</u>

<u>YEAR</u>	<u>TABLE 31</u> <u>Woodworking</u>	<u>TABLE 32</u> <u>Glass Mfg.</u>
2011	1.000	1.000
2010	1.024	1.027
2009	1.016	1.016
2008	1.040	1.049
2007	1.074	1.098
2006	1.117	1.163
2005	1.159	1.226
2004	1.238	1.334
2003	1.276	1.387
2002	1.295	1.414
2001	1.307	1.421
2000	1.308	1.435
1999	1.330	1.462
1998	1.332	1.466
1997	1.338	1.478
1996	1.371	1.497
1995	1.385	1.522
1994	1.425	1.585
1993	1.473	1.621
1992	1.524	1.644

<u>2012</u>	<u>1.000</u>	<u>1.000</u>
<u>2011</u>	<u>1.025</u>	<u>1.029</u>
<u>2010</u>	<u>1.056</u>	<u>1.064</u>
<u>2009</u>	<u>1.048</u>	<u>1.053</u>
<u>2008</u>	<u>1.073</u>	<u>1.087</u>
<u>2007</u>	<u>1.108</u>	<u>1.138</u>
<u>2006</u>	<u>1.152</u>	<u>1.205</u>
<u>2005</u>	<u>1.195</u>	<u>1.270</u>
<u>2004</u>	<u>1.277</u>	<u>1.382</u>
<u>2003</u>	<u>1.316</u>	<u>1.437</u>
<u>2002</u>	<u>1.336</u>	<u>1.465</u>
<u>2001</u>	<u>1.348</u>	<u>1.473</u>
<u>2000</u>	<u>1.349</u>	<u>1.487</u>
<u>1999</u>	<u>1.372</u>	<u>1.515</u>
<u>1998</u>	<u>1.374</u>	<u>1.519</u>
<u>1997</u>	<u>1.380</u>	<u>1.531</u>
<u>1996</u>	<u>1.414</u>	<u>1.551</u>
<u>1995</u>	<u>1.429</u>	<u>1.578</u>
<u>1994</u>	<u>1.470</u>	<u>1.642</u>
<u>1993</u>	<u>1.520</u>	<u>1.679</u>

AUTH: 15-1-201, MCA

IMP: 15-6-138, 15-8-111, MCA

REASONABLE NECESSITY: The department determines the market value of industrial machinery and equipment by using the guides and valuation manuals listed in its rules and then applying the trend factor tables published in its rules. The machinery and equipment is valued annually, and because the trend tables used to value the property change from year to year, the department must provide taxpayers with notice of those changes and does so through the rulemaking process.

The annual update to the trend tables provides taxpayers with the current depreciation percentage for each of the personal property classifications for the upcoming year. The updates also clearly identify for the taxpayer how the department values and depreciates property over time.

Therefore, the department proposes to amend ARM 42.22.1311, to update the trend factors table in the rule.

Additionally, while the table contents have been updated annually, it was discovered in a recent biennial review of the department's rules that the year in the title of the table still showed 2006. The table title is being amended to update the year from 2006 to 2013 at this time and will be revised accordingly each year along with future updates to the contents of the table.

The department further proposes to amend the rule to revise the title of the appraisal guide being referenced in (1), to provide consistency throughout the trended depreciation rules in Title 42.

42.22.1312 INDUSTRIAL MACHINERY AND EQUIPMENT DEPRECIATION SCHEDULE (1) remains the same.

(2) The department will utilize the depreciation schedules set forth above as reflected in the following example:

EXAMPLE  
The Trending/Depreciation Procedure

In order to use the economic age-life method to value machinery and equipment, several steps must be followed.

1. Determine the economic life of the subject industry.
2. Acquire a set of reasonable trends for that economic life.
3. Acquire the original installed cost (direct and indirect) for the subject equipment.
4. Apply the appropriate trend factor to the original installed cost to determine replacement cost new (RCN).
5. Depreciate the RCN on the basis of age to arrive at sound value.

Example:

Industry - Sawmill  
Economic life - 10 years  
~~2004~~ 2013 Table - Table 18

<u>Case</u>	I	II
Equipment - Motor		
Original Installed Cost	\$ 200	\$ 100
Year Installed	<del>2000</del> <u>2005</u>	<del>1977</del> <u>1987</u>

<u>Case I</u>		<u>Case II</u>	
Cost	\$ 200	Cost	\$ 100
x Trend	<del>1.027</del> <u>1.215</u>	x Trend	<del>1.125*</del> <u>1.352*</u>
RCN	<del>\$ 205</del> <u>243</u>	RCN	<del>\$ 113</del> <u>135</u>
x % Good	<del>.67</del> <u>.30</u>	x % Good	.20
Sound Value	<del>\$ 138</del> <u>73</u>	Sound Value \$	<del>23</del> <u>27</u>

\*The trending factor is applied only to the last year of the economic life. Although the equipment is more than 20 years old, it is trended by the 10th year trend.

AUTH: 15-1-201, MCA

IMP: 15-6-138, 15-6-156, 15-8-111, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.22.1312 to update the example with more current trending and depreciation schedule data.

4. Concerned persons may submit their data, views, or arguments, either

orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than November 21, 2012.

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

6. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State October 1, 2012



BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the amendment of )  
ARM 42.17.111, 42.17.134, 42.17.305, )  
42.17.601, 42.17.602, 42.17.603, )  
42.17.604, and 42.17.605 relating to )  
withholding and estimated tax )  
payments )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On November 19, 2012, at 1:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5 p.m., October 29, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

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

42.17.111 WHO MUST WITHHOLD MONTANA INCOME TAX AND WHO IS SUBJECT TO WITHHOLDING (1) through (6) remain the same.

(7) Wages paid to a resident of North Dakota for personal services rendered within Montana are not subject to withholding provided the employee has filed a ~~form~~ Form NR-2, certification Certification of North Dakota ~~residency~~ Residence, in accordance with ARM 42.17.134.

(8) Wages paid to the nonmilitary spouse of a military serviceperson for personal services rendered in Montana which meet the criteria in ARM 42.15.112, are not subject to withholding provided the employee has completed a Form MSR, Employee Certificate of Status under the Military Spouses Residency Relief Act.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, MCA

REASONABLE NECESSITY: As required in 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.17.111.

The proposed amendments will add another example of when withholding from wages earned in Montana is not required. The federal Military Spouse Residency Relief Act of 2009 provides that in certain circumstances the wages earned by the nonmilitary spouse of a military serviceperson stationed in Montana are not considered Montana wages. The amendment informs the nonmilitary spouse and their employers of the provision and coordinates the rule with existing criteria outlined in ARM 42.15.112(6).

42.17.134 RECIPROCAL AGREEMENT - NORTH DAKOTA (1) An employer is not required to deduct Montana state income tax withholding on wages earned by residents of North Dakota under the provisions of the Income Tax and Withholding Tax Reciprocal Agreement between Montana and North Dakota. Relief from withholding is subject to all of the following provisions: in (2) through (5).

~~(a)~~(2) A North Dakota resident performing services in Montana for compensation must annually provide ~~form Form NR-2, a certificate~~ Certificate of North Dakota residency Residence, to ~~his or her~~ their employer before the employer may discontinue withholding on compensation earned in Montana. The certificate must be filed with the employer within 30 days of the start of employment. The certificate is valid only from the date filed to December 31 of the year in which filed. A new certificate to renew the exemption from withholding must be filed with the employer by the last day in February of each year. The certificate is rendered invalid if the employee changes his or her residence to any state other than North Dakota;;

~~(b)~~(3) Withholding from a North Dakota resident's compensation earned in Montana must be treated as if earned in North Dakota. If North Dakota requires withholding from the compensation, the North Dakota withholdings must be deducted from the compensation;;

~~(c)~~(4) A copy of the employee's ~~form Form~~ Form NR-2 must be submitted by the employer to the department ~~after~~ within 30 days of when it is provided to the employer in the case of new employment, or by March 31 if the form is renewing an exemption; ~~and.~~

~~(d)~~(5) If the department determines that an employee's certificate is false or unsubstantiated, it may require an employer to disregard any claim to North Dakota residency and resume withholding on compensation earned in Montana.

AUTH: 15-30-2620, MCA

IMP: 15-30-2502, 15-30-2509, MCA

REASONABLE NECESSITY: As required in 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.17.134.

The proposed amendments will provide timelines for the submission of Montana Form NR-2, Employee Certificate of North Dakota Residence, by employees to their employers and the subsequent submission of copies of the forms by the employers to the department. The inclusion of the timelines will help ease administrative burdens for all parties.

The department further proposes to amend the rule to make capitalization and punctuation corrections.

42.17.305 ESTIMATED TAX AND PAYMENT OF INSTALLMENTS

(1) Except as provided in 15-30-2512, MCA, a taxpayer is required to pay at least 100% percent of their tax liability for the preceding tax year or 90% percent of their tax for the current tax year through withholding and estimated payments. If they do not, they will be liable for interest on the underpayment provided in 15-30-2512, MCA. In addition, unless the department grants a taxpayer an extension to pay an installment of estimated tax as provided in ARM 42.17.306, a taxpayer required to make installment payments of estimated tax who fails to timely pay an installment is liable for interest on the unpaid installment from the due date of the installment to the earlier of the date of payment or the due date of their income tax return, not including extensions, as provided in 15-1-216, MCA, and ARM 42.2.306.

(2) Taxpayers ~~must~~ may complete the ~~form~~ Form ESW, Montana Individual Estimated Income Tax Worksheet, to determine if they are required to make current year installment payments of estimated tax and, if necessary, to determine the amount. If a taxpayer's income fluctuates or is seasonal, employing the annualization method may lower the amount of one or more installments. A taxpayer using the optional annualization method must complete the ~~form~~ Form ESA, Annualization Worksheet. Taxpayers are not required to file the estimated tax worksheet with their income tax return, but it is a tax record the taxpayer must retain and provide the department on request. Taxpayers using the annualization method must file ~~form~~ Form ESA with their income tax return. If the taxpayer files their individual income tax return electronically, the ~~form~~ Form ESA is a tax record the taxpayer must retain and provide the department on request.

(3) remains the same.

(4) If a taxpayer has not received estimated tax payment vouchers from the department before the first installment due date, the payment should be accompanied by a written statement setting forth that the payment is an estimated tax payment, the tax year, the due date of the installment, and the taxpayer's name, mailing address, and social security number and be:

(a) personally delivered to:

Montana Department of Revenue  
Sam W. Mitchell Building  
125 North Roberts, 3rd Floor  
Helena, Montana; or

(b) mailed to:

Montana Department of Revenue  
P.O. Box 6308  
Helena, Montana 59604-6308.

(5) and (6) remain the same.

(7) If fewer than four installments are required, the applicable percentage of the required annual amount for each installment is increased. The applicable percentage per installment is as follows:

(a) 100% percent for one installment;

(b) 50% percent for two installments; and

(c) 33 1/3% percent for three installments.

Example 1: If the short tax year is the 10-month period from January 1 through October 31, the estimated tax must be paid in four installments, on April 15, June 15, September 15, and November 15. Each installment is 25% percent of the total payment required.

Example 2: If the short tax year is the 9-month period from January 1 through September 30, the estimated tax must be paid in three installments, on April 15, June 15, and October 15. With three installments, each installment is 33 1/3% percent of the total payment required.

AUTH: 15-30-2620, MCA

IMP: 15-30-2512, MCA

REASONABLE NECESSITY: As required in 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.17.305.

The proposed amendments will remove the requirement that taxpayers must use a worksheet provided by the department to determine if they need to make estimated income tax payments for the current year and the amount. While the department does provide Form ESW, Montana Individual Estimated Income Tax Worksheet, each year as a tool for taxpayers to use should they choose to, taxpayers also have the option to use alternative methods and calculations as long as the appropriate estimated payments are made.

The department further proposes to amend the rule to make capitalization and punctuation corrections.

#### 42.17.601 ADVANCE PAYMENTS AND FURTHER DISTRIBUTIONS

(1) remains the same.

(2) Each ~~remitter~~ remitter who disburses funds that are owed to any person owning a royalty interest, overriding royalty interest, production payment, or any other nonworking interest in minerals produced in this state, is subject to the withholding requirement of ~~15-30-2536~~ 15-30-2538, MCA.

(3) If a mineral is taken in-kind by a royalty owner, the take-in-kind owner must forward 6% percent of the net value of the mineral that was taken in-kind to the department unless they are exempt from withholding ~~due to~~ under 15-30-2539 or 15-31-102, MCA.

(4) If you are a ~~remitter~~ remitter and you are providing accounting services, and these accounting services include fulfilling the requirements of 15-30-2541, MCA, for more than one producer, you must remit separate withholding payments and submit a separate ~~form~~ Form RW-3, Montana Mineral Royalty Withholding Tax Reconciliation Return, for each producer.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2541, 15-31-102, MCA

REASONABLE NECESSITY: As required in 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.17.601.

The proposed amendments will correct the misspelling of the word "remitter." The original legislation used the word "remittor." However, the spelling of "remitter" is included in the applicable statutes, therefore, the department is proposing to update its rules to reflect the correct spelling.

The department further proposes to amend the rule to add and revise the implementing statutes and to make capitalization and punctuation corrections.

42.17.602 CLAIMING THE CREDIT FOR TAX WITHHELD (1) Claiming credit for the tax withheld shall be accomplished as follows:

(a) Credit may be claimed for the tax withheld on a Montana individual income tax return or a Montana corporation license tax return.

(b) Taxpayers who are shareholders in a corporation taxed under Subchapter S of the IRC doing business in this state must maintain a copy of federal ~~form~~ Schedule K-1. They may claim credit for the amount shown as their percentage share of the tax withheld from Montana net royalty payments by the corporation, limited liability company, or partnership.

(c) An estate or trust is entitled to credit for the tax withheld in proportion to its share of federal distributable net income. The remaining credit must be passed through to the beneficiaries in proportion to their respective shares of federal distributable net income of the estate or trust. To claim the credit, the beneficiaries must maintain a copy of federal ~~form~~ Schedule K-1 and claim credit for the amount shown by the fiduciary as their percentage share of the tax withheld from Montana mineral production payments.

(d) Any person filing on a fiscal year ending other than December 31, must claim a credit for the withholding tax shown on the personal income tax return required to be filed during the year following the December closing period of the ~~form~~ Form RW-3, Montana Mineral Royalty Withholding Tax Reconciliation Return.

(e) Production taxes cannot be claimed as withholding for mineral royalty withholding or as income tax withholding.

AUTH: 15-30-2547, MCA

IMP: 15-30-2539, MCA

REASONABLE NECESSITY: As required in 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.17.602.

The proposed amendments will revise the reference to the federal Schedule K-1 appropriately as a schedule rather than a form, and to make a capitalization revision on the name of a form.

42.17.603 APPLICABLE THRESHOLDS - CHANGE OF OWNERSHIP - PUBLICLY TRADED PARTNERSHIPS - NONPROFIT ORGANIZATIONS - EXEMPT ROYALTY OWNERS (1) ~~An oil and gas remitter is not required to withhold from their~~ There is not a requirement to withhold from payments to royalty

interest owners if the producing entity's production does not exceed 100,000 barrels of oil and 500 million cubic feet of gas, based on the previous three calendar years' average production reported to the Montana Board of Oil and Gas Conservation.

For example, the department will calculate whether payments for an entity entity's production ~~is required~~ are subject to ~~withhold~~ withholding from their royalty interest owners for ~~2010~~ 2013 by averaging the production numbers for calendar years ~~2006, 2007, and 2008~~ 2009, 2010, and 2011 and comparing this average to the production exemption limits.

(2) If an entity does not have three years of recent mineral production records, the ~~remitter~~ remitter may provide the department with information supporting the exemption from the withholding requirements of 15-30-2536, MCA. The department shall review this information to determine if an exemption is warranted and notify the ~~remitter~~ remitter of the determination.

(3) On or before September 15 of each year, the department shall notify all oil and gas producers of their requirements as it relates to the provisions of ~~15-30-2536~~ 15-30-2538 and 15-30-2539, MCA. The department will notify all other mineral producers by September 15 only if they are required to withhold.

(4) If a person ~~that~~ who is required to withhold on behalf of their royalty interest owners sells their mineral interests during the year and ceases to be the ~~remitter~~ remitter, the person that acquired the mineral interests becomes the ~~remitter~~ remitter and must continue to withhold 6% percent of the net royalty payments from the royalty interest owners subject to the withholding requirements of ~~15-30-2536~~ 15-30-2538, MCA.

(5) If a ~~remitter~~ remitter produces both oil and gas, and only one resource meets the requirements for withholding as provided in 15-30-2539, MCA, the withholding provisions apply to both oil and gas regardless of the production volumes of the other resource that does not meet the requirements of 15-30-2539, MCA.

(6) If a person, not previously extracting resources in the state, begins extracting from new or existing sources of natural resources in Montana (i.e., newly drilled oil or gas wells or a new mine), that person is required to withhold 6% percent of the net royalty payments from the royalty interest owners subject to the withholding requirements of ~~15-30-2536~~ 15-30-2538, MCA.

~~(7) The person described in (6) that extracts minerals may not be required to withhold on net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the new producing property will not meet the threshold requirements established in 15-30-2539, MCA.~~

~~(8) All persons that extract minerals other than oil and gas must withhold 6% percent of the net royalty payments of all royalty interest owners subject to the withholding requirements of 15-30-2536 15-30-2538, MCA.~~

~~(9)(8)~~ (8) The person described in ~~(8)~~ (7) may not be required to withhold net royalty payments from their royalty interest owners if the person can provide information that satisfies the department that the net royalty payments are immaterial.

(a) The department has defined an entity that has immaterial net royalty payments as an entity that has production amounts for minerals, other than oil and gas, with a value less than ~~\$5,000,000~~ \$5 million. The only filing requirement for this type of entity is the filing of the Form RW-3 by February 28 of the following year along with a listing of all royalty recipients. The ~~\$5,000,000~~ \$5 million value will be based on a three-year average of production value reported to the department's

Business Tax and Valuation Bureau. For example, the department will calculate whether an entity is required to withhold from their royalty interest owners for ~~2010~~ 2013 by averaging the valuation reported for ~~2006, 2007, and 2008~~ 2009, 2010, and 2011.

~~(40)~~(9) Section 15-30-2539, MCA, allows for a publicly traded partnership to be exempt from the withholding requirements of 15-30-2536 through 15-30-2547, MCA, provided the publicly traded partnership, ~~who~~ that is a royalty owner, submits a report to both the ~~remitter~~ remitter and the department. The report, which can be in the form of a letter, must contain the publicly traded partnership's letterhead and state that the partnership is publicly traded and the partnership requests exemption from 15-30-2536 through 15-30-2547, MCA. The request must be received by the ~~remitter~~ remitter and the department prior to November 1 of the year prior to the calendar year in which the partnership requests exemption. Upon receipt of the report, the department will notify the partnership and the ~~remitter~~ remitter of either acceptance or denial of the request within ~~thirty~~ 30 days. The election does not need to be repeated annually unless requested by the department.

~~(44)~~(10) Section 15-30-2539, MCA, allows for an organization that is exempt from taxation under 15-31-102, MCA, to be exempt from the withholding requirements of 15-30-2536 through 15-30-2547, MCA, provided the exempt organization, ~~who~~ that is a royalty owner, submits a report to both the ~~remitter~~ remitter and the department. The report, which can be in the form of a letter, must contain the exempt organization's letterhead and requests exemption from 15-30-2536 through 15-30-2547, MCA. The request must be received by the ~~remitter~~ remitter and the department prior to November 1 of the year prior to the calendar year in which the exempt organization requests exemption. Upon receipt of the report, the department shall notify the exempt organization and the ~~remitter~~ remitter of either acceptance or denial of the request within thirty days. The election does not need to be repeated annually unless requested by the department.

(11) The exception provided in 15-30-2539, MCA, for payments to a federally recognized Indian tribe, applies to all mineral production described in the Mineral Leasing Act of 1939.

(12) According to 15-30-2539, MCA, the department grants ~~remitters~~ remitters the authority to forego withholding the tax from royalty owners who meet the following qualifications:

- (a) the amount of the royalty interest payment is less than \$2,000 per year; or
- (b) less than \$166 per month.

(13) The ~~remitter~~ remitter that does not withhold from royalty interest owners pursuant to (12) may, upon request from the department, be required to provide a list of the royalty interest owners.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-3540, 15-30-2541, 15-30-2542, 15-30-2543, 15-30-2544, 15-30-2545, 15-30-2546, 15-30-2547, 15-31-102, MCA

REASONABLE NECESSITY: As required in 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.17.603.

The proposed amendments will outline that the determination of whether royalty payments are subject to withholding is based on the producing entity's production levels. In some cases, the entity ultimately responsible for paying the royalty owners is not the producing entity and may not be directly producing. The proposed changes more specifically state that this does not relieve the remitter from the withholding requirement.

The proposed amendments will also update the years used in the examples to more current years so that they are more relevant and understandable. Further, the proposed amendments will delete (7) because that section essentially duplicates (2) and is therefore redundant and confusing.

The department further proposes to add language regarding the exemption from withholding for federally recognized Indian tribes. The new language will address some current confusion and more specifically outline that the exemption applies to all production described in the Mineral Leasing Act of 1939, not simply oil and gas.

Finally, the proposed amendments to the rule will correct the misspelling of the word "remitter," add and revise implementing statutes, and make capitalization and punctuation corrections.

42.17.604 REGISTRATION FOR WITHHOLDING (1) through (4) remain the same.

(5) Not being registered does not relieve a ~~remitter~~ remitter from the collection and reporting requirements.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2541, MCA

REASONABLE NECESSITY: As required in 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.17.604.

The proposed amendment will correct the misspelling of the word "remitter."

42.17.605 FILING REQUIREMENTS (1) The following forms are to be completed and filed in accordance with instructions provided by the department:

(a) Form RW-1, Mineral Royalty Withholding Payment Voucher, must be filed quarterly unless the department establishes that the entity is exempt from the withholding requirements of ~~15-30-2536~~ 15-30-2538, MCA. A ~~remitter~~ remitter may request to file a ~~form~~ Form RW-1 on an accelerated basis. The ~~remitter~~ remitter must receive approval from the department before remitting the withholding tax on a more frequent basis than quarterly;

(b) A ~~remitter~~ remitter who has no withholding to remit for a remittance period shall, on or before the due date, send a payment voucher showing that a zero amount is being remitted;

(c) Form RW-3, Montana Annual Mineral Royalty Withholding Tax Reconciliation, must be filed on or before February 28 of each year. Form RW-3 must be accompanied by copies of each royalty owner's withholding statements on



federal form 1099-MISC, Miscellaneous Income, or Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding;

(d) Form 1099-MISC, Miscellaneous Income, or Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, shall be furnished by the ~~remitter~~ remitter to each person who is entitled to a credit for taxes withheld each calendar year before January 31 of each year; and

(e) Each ~~remitter~~ remitter that is exempt from withholding is still required to file the ~~form~~ Form RW-3 with the department along with a copy of ~~form~~ Form 1099-MISC, Miscellaneous Income, or Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, for every recipient of royalties. These reports are due on or before February 28 of each year; and

(f) A substitute for Form 1099-MISC may be filed with the department provided it:

(i) generally follows the guidelines in federal Publication 1179, General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns; and

(ii) reports all the information regarding Montana royalty payments as required in 15-30-2543, MCA, and the rules in this subchapter.

(2) remains the same.

(3) If a ~~remitter~~ remitter does not withhold on a royalty interest owner who in the previous year met the exemption requirement in 15-30-2539, MCA, but exceeded that requirement in the current year, the department will not penalize the ~~remitter~~ remitter for the lack of withholding in that current year.

AUTH: 15-30-2547, MCA

IMP: 15-30-2538, 15-30-2539, 15-30-2541, 15-30-2543, 15-30-2544, MCA

REASONABLE NECESSITY: As required in 2-4-314, MCA, the department conducted a biennial review of all its administrative rules. As a result of that review, the department is proposing to amend ARM 42.17.605.

The proposed amendment will allow for the federal Form 1042-S, Foreign Person's U.S. Source Income Subject to Withholding, to be used to report royalty income and withholding. Reporting entities may use Form 1042-S rather than Form 1099-MISC in certain cases. The proposed amendment will address confusion regarding which forms are acceptable for reporting to Montana.

Additionally, the proposed amendments will provide reporting entities with better guidance about the manner in which the required information is submitted. The department understands that the manner in which an entity submits information related to royalty payments to the federal government may not always present the information required to be reported to Montana. By providing guidelines for alternative formats in the rule, reporting entities will gain assurance that they are reporting in an acceptable format and the department will be able to use the information more efficiently.

Finally, the proposed amendments to the rule will correct the misspelling of the word "remitter," add and revise implementing statutes, and make capitalization and punctuation corrections.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than November 27, 2012.

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

6. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

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

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

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

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

Certified to Secretary of State October 1, 2012

BEFORE THE SECRETARY OF STATE  
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On September 6, 2012, the Secretary of State published MAR Notice No. 42-2-184 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1759 of the 2012 Montana Administrative Register, Issue Number 17.

2. A public hearing was held on September 27, 2012. One written comment was received during the comment period opposing the simultaneous filing deadlines for third quarter replacement pages and 2013 MAR Issue No. 19 (September 30). The comment included suggested modifications to the 2013 publication schedule. Due to statutory restrictions in 2-4-312, MCA, the Secretary of State is unable to use the suggested modifications. The schedule is being further amended to meet the requirements of 2-4-312, MCA, and to avoid the simultaneous notice submission deadlines and quarter-end replacement page deadlines of December 31, 2012, and September 30, 2013. The revised schedule maintains two publication dates per month which results in a total of 24 issues, allowing agencies the most filing and publication dates possible to complete their rulemaking. Therefore, the Secretary of State proposes the following changes to the 2013 schedule, deleted matter interlined, new matter underlined:

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

~~2013 Register Publication Schedule~~

<del>Issue</del>	<del>Filing (due by noon)</del>	<del>Publication</del>
<del>1</del>	<del>December 31</del>	<del>January 10</del>
<del>2</del>	<del>January 14</del>	<del>January 24</del>
<del>3</del>	<del>January 28</del>	<del>February 7</del>
<del>4</del>	<del>February 11</del>	<del>February 21</del>
<del>5</del>	<del>February 25</del>	<del>March 7</del>
<del>6</del>	<del>March 11</del>	<del>March 21</del>
<del>7</del>	<del>March 25</del>	<del>April 4</del>
<del>8</del>	<del>April 15</del>	<del>April 25</del>

9	April 29	May 9
10	May 13	May 23
11	May 28	June 6
12	June 10	June 20
13	June 24	July 5
14	July 8	July 18
15	July 22	August 1
16	August 5	August 15
17	August 26	September 5
18	September 16	September 26
19	September 30	October 10
20	October 15	October 24
21	October 28	November 7
22	November 12	November 21
23	November 25	December 5
24	December 9	December 19

2013 Register Publication Schedule

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

<u>22</u>	<u>November 18</u>	<u>November 27</u>
<u>23</u>	<u>December 2</u>	<u>December 12</u>
<u>24</u>	<u>December 16</u>	<u>December 26</u>

(2) remains as proposed.

AUTH: 2-4-312, MCA

IMP: 2-4-312, MCA

3. Concerned persons may submit their data, views, or arguments concerning the proposed amendment in writing to Jorge Quintana, Secretary of State's Office, P.O. Box 202801, Helena, Montana 59620-2801, or by e-mailing [jquintana@mt.gov](mailto:jquintana@mt.gov), and must be received no later than 5:00 p.m., October 24, 2012.

/s/ Jorge Quintana  
JORGE QUINTANA  
Rule Reviewer

/s/ Linda McCulloch  
LINDA MCCULLOCH  
Secretary of State

Dated this 1st day of October, 2012.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I and New Rule II and the amendment of ARM 10.55.601 through 10.55.606, 10.55.701 through 10.55.711, 10.55.713 through 10.55.717, 10.55.801 through 10.55.805, 10.55.901 and 10.55.902, 10.55.904 through 10.55.910, 10.55.1001, and 10.55.1003 relating to accreditation standards ) NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On July 26, 2012, the Board of Public Education published MAR Notice No. 10-55-262 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 1401 of the 2012 Montana Administrative Register, Issue Number 14.

2. On August 9, 2012 the Board of Public Education published MAR Notice No. 10-55-262 amending the location for the public hearing at page 1553 of the 2012 Montana Administrative Register, Issue Number 15.

3. The Board of Public Education and the Superintendent of Public Instruction jointly brought together a 36 member task force and staff to review and recommend revisions to the superintendent on Administrative Rules of Montana, Title 10, Chapter 55 Standards of Accreditation as necessary to align standards with current innovative practice providing flexibility and ensuring quality education and accountability. The task force developed guiding principles for its work as follows:

"Chapter 55 Accreditation Standards provide a framework to ensure the constitutional right of every Montana student to a basic system of free quality public schools that develops the full educational potential of every student and that

1. recognizes the uniqueness and diversity of Montana students;
2. implements the elements of educational quality that best prepare students for their role as global citizens of the 21st Century;
3. acknowledges the role of cultural heritages in the community, state, nation, and world;
4. recognizes the importance of school, family and community engagement;
5. requires the appropriate use of a variety of assessments to guide curriculum development, to shape instruction, and to inform decision making;
6. guides the schools to be accountable to students, families, and the community;
7. encourages innovation in implementing Chapter 55 Accreditation Standards while maintaining the intent of those standards;

8. acknowledges the role of local control; and
9. balances the needs of present and future Montana students with the realities of limited resources."

The Superintendent of Public Instruction reviewed and amended the revisions suggested by the task force and submitted her recommendations to the Board of Public Education at the May 2012 BPE meeting. In July 2012 the board adopted the Superintendent's recommendations in a Notice of Public Hearing on Proposed Amendment. The public hearing was held August 20, 2012. The board received many written comments and 11 people testified at the public hearing. The board appreciates the comments and thanks everyone for their input into this rulemaking process. All comments have been thoughtfully considered. A summary of the comments received and the board's responses to specific issues are as follows:

#### ARM 10.55.602

COMMENT 1: A comment was received stating that a new district was not created by the formation of a joint board of trustees and therefore the definitions in ARM 10.55.602(7), (38) and (39) should be amended to delete the last sentence in (7), the third sentence in (38) and the last sentence in (39)(a). Also the term being defined in (7) and (39)(a) should be changed to "Combined elementary-high school districts" to clarify that there is not a new district created, but they are simply combined into a new system.

RESPONSE 1: The board agrees and amends the affected sections accordingly.

COMMENT 2: A commenter suggested that the definition of a K-12 district in ARM 10.55.602(21) should be amended to include a citation to statutory definition and to correct an erroneous citation as follows: "K-12 district" as defined in 20-6-701, MCA means ... pursuant to 20-6-101, MCA.

RESPONSE 2: The board agrees and amends the affected section accordingly.

COMMENT 3: A commenter requested that ARM 10.55.602(20) be clarified for accuracy and with citation to the applicable corresponding licensing rules and read: "Internship" as provided for in ARM 10.55.607 means an agreement between a fully licensed Class 1, 2, or 3 educator, the school district, and a Montana accredited educator preparation program. Internships are permitted in endorsement areas approved by the Board of Public Education in ARM 10.57.412 and 10.57.413.

RESPONSE 3: The board agrees and amends the affected section accordingly.

#### ARM 10.55.603

COMMENT 4: A commenter stated that ARM 10.55.603(5)(d) should be amended to correct an erroneous citation, i.e. (3)(c) should be (5)(c).

RESPONSE 4: The board agrees and amends the affected section accordingly.

ARM 10.55.604

COMMENT 5: Many comments were received in support of the proposed amendments submitted by Montana School Boards Association, Montana Rural Education Association, School Administrators of Montana and MEA-MFT (the "associations") for reconsideration of the language of ARM 10.55.604. The education associations stressed inclusion of procedures to create a board to review applications for variance to standards including: the makeup, appointment, and terms of the review board; the ways in which the review board will conduct their reviews, receive technical assistance, and make recommendations; and naming specific education organizations as the exclusive entities submitting review board members to the superintendent. The reasons given for the suggested amendments to the board's proposed language in this rule are: although suggested by the task force, the superintendent did not include all of the procedural language in her recommendations to the board; the suggested language is "an integral part of the delicate compromise that has been reached between our respective groups"; to "ensure balance of perspectives as well as greater cooperation and collaboration in the process of reviewing proposed variances to standards in the future"; and "to ensure that the K-12 community can work collaboratively and effectively in integrating these substantial changes into Montana's public schools."

Several commenters supported the superintendent's recommendations stating that they were more efficient and that it is under the superintendent's prerogative to set up the procedures to implement standards.

One commenter stated that regulation should highlight the intent of the board's goals but never spell out how to reach the goals.

RESPONSE 5: Constitutional and statutory authority and responsibility for the accreditation of K-12 public schools lie with the Board of Public Education and the Superintendent of Public Instruction.

"Standards of accreditation for all schools must be adopted by the board of public education upon the recommendations of the superintendent of public instruction." 20-7-101, MCA. "The conditions under which each school ... operates must be reviewed by the superintendent of public instruction to determine compliance with the standards of accreditation. The accreditation status of each school must then be established by the board of public education upon the recommendation of the superintendent of public instruction. . . ." 20-7-102, MCA.

The board does wish to incorporate the essence of the comments made and



the work of the task force related to the process for utilizing a review board for applications for variances to standards -- while addressing the concerns raised above.

ARM 10.55.604 is approved as amended by the board with the language suggested by the associations with the following addition to (1)(f): "within 60 calendar days of the review board being referred an application."

#### ARM 10.55.605

COMMENT 6: A commenter recommended that ARM 10.55.605(1) be amended as follows: "Regular accreditation means the school has met the assurance standards and student performance standards as defined in ARM 10.55.606 and the Licensing Endorsement Requirements Related to Teaching Assignments, ~~adopted by the Board of Public Education July 2012~~, a copy of which may be found at : <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> (Appendix A)." The reason for this proposed amendment is that the endorsements for Class 4 and Class 8 are not static, and Appendix A cannot list all possible endorsements for these classes of licensure as provided for in ARM Title 10, Chapter 57 Licensure.

ARM 10.55.605(2) should be similarly amended and the document "Accreditation and Procedures and Status Criteria" should be amended wherever referenced in the proposed rules to reflect that it is called "Accreditation Status Criteria Reference Guide."

RESPONSE 6: The board agrees and amends the affected sections accordingly.

#### ARM 10.55.606

COMMENT 7: One commenter raised various questions about how performance standards in ARM 10.55.606 would be defined and applied, including concerns about what an improvement plan entails, and questioned the difference between the intensive assistance process and the continuous school improvement plan required in ARM 10.55.601.

RESPONSE 7: In addition to the description of student performance levels in ARM 10.55.606, ARM 10.55.605 incorporates the Accreditation Procedures and Status Criteria Reference Guide which clarifies how both the assurance standards and performance standards will be applied, and includes a detailed step-by-step process of intensive assistance. Continuous school improvement plans (the CSIP) are required of all schools and districts. The Intensive Assistance Process is specifically applied when schools have serious and continuing deviations.

COMMENT 8: A comment was submitted in support of ARM 10.55.606 which provides for a "blended model" balancing inputs (assurance standards) with outputs (student performance). The commenter stated it was "affordable middle ground in accreditation" and makes communicating with the public about the status of the

school much easier.

RESPONSE 8: The board thanks the commenter and appreciates the support of the amendments to this rule.

COMMENT 9: One commenter requested that a different model of accountability based on improvement data be adopted.

RESPONSE 9: Although student progress is important, there are no adequate data or research-based measurement tools to implement a growth-based model.

COMMENT 10: One commenter stated that the accreditation standards should be focused on accountability, sharing information, and flexibility between assurance standards and performance standards.

RESPONSE 10: The board thanks the commenter and appreciates the support of the proposed rules.

COMMENT 11: One commenter asked what would happen if the MontCAS is no longer used to evaluate student performance and the scaled scores change.

RESPONSE 11: The board is aware that rule amendments may become necessary if other significant influencing factors change.

COMMENT 12: One commenter requested that the poverty index be created/applied with respect to student performance standards to ensure equitable and fair funding.

RESPONSE 12: Although relevant to teaching standards and administering schools, there are no adequate data or research-based measurement tools to implement a poverty index for measuring student performance.

COMMENT 13: One commenter suggested that 10.55.606(4) be amended for clarification to read: "For schools with any combination of only grades K-2, only the assurance standards will be used to determine accreditation status."

RESPONSE 13: The board agrees and amends the affected section accordingly.

#### ARM 10.55.701

COMMENT 14: Many comments were received in support of amendments submitted by the associations for reconsideration of the proposed language in ARM 10.55.701(4) related to evaluation systems for teachers and administrators. The amendments suggest replacing task force language derived from national organizations and replacing the educator evaluation system components with more

general alternative language, specifically:

"10.55.701(4)(a) The evaluation system used by a school district for licensed staff shall, at a minimum:

1. Be conducted on at least an annual basis with regard to nontenure staff and according to a regular schedule adopted by the district for all tenure staff;
2. Be aligned with applicable district goals, standards of the board of public education and the district's mentorship and induction program required under 10.55.701(8)(c);
3. Identify what perceptions and skill sets are to be evaluated;
4. Include both formative and summative elements;
5. Include an assessment of the educator's effectiveness in supporting every student in meeting rigorous learning goals through the performance of the educator's duties.

(b) The Superintendent of Public Instruction shall develop and publish as an appendix to the Chapter 55 rules model evaluation instruments that comply with this rule in collaboration with the MEA-MFT, Montana Rural Schools Association, Montana School Boards Association, School Administrators of Montana, and Montana Small Schools Alliance. A school district adoption and using one of the model instruments shall be construed to have complied with this rule, though use of one of the models shall not be required provided that the district's evaluation instrument and process substantially conforms to the requirements set forth in this section."

One commenter said that the language proposed by the Board of Public Education "reflect the advances in evaluation that reflect researched best practice," however, the language is too prescriptive, infringes on local control, and may impact collective bargaining.

Other commenters fully supported the proposed evaluation system in ARM 10.55.701(4) stating that the proposed rules: provide clear target goals; are based in research; are part of professional training in teacher prep programs; are essential to good educational leadership; focus on the qualities that make good teachers better; allow negotiations with teacher unions to develop detail of performance and specific criteria on which districts will base evaluation; provide more accountability; give the education profession more credibility; and because the rules are based on national standards, many model instruments will be available to districts.

One commenter noted that not all task force members were consulted and not all support the amendments proposed by the education organizations noted above.

RESPONSE 14: ARM 10.55.701 is approved as amended by the Board of Public Education with the language suggested by the associations with the following amendments:

(4)(a)(iii) strike the phrase "perceptions and"

(4)(b) reword to read: "The Superintendent of Public Instruction shall

develop and publish model evaluation instruments..." and strike "as an appendix to Chapter 55 rules."

COMMENT 15: Several comments indicated the Superintendent's recommendations to the board were made "unilateral[ly]" or "last minute."

RESPONSE 15: The task force was brought together by the Board of Public Education and Superintendent of Public Instruction in early 2010 to assist in the work of reviewing and revising the Chapter 55 accreditation rules. Over their two years of work, the task force understood that their draft recommendations would be reviewed and revised by the superintendent, who has the statutory authority and obligation to make formal recommendations to the board. The superintendent recommended many changes to the task force draft, many of which were technical, grammatical, and for clarification. Other changes were more substantive. The superintendent's recommendations to the board were posted and available to the public prior to the boards' May, 2012 regularly scheduled meeting. The public was given the opportunity to comment on the superintendent's recommendations at that meeting and also at the board's regularly scheduled July, 2012 meeting. The board had lengthy public discussions about the similarities and differences between the task force's proposed rule amendments and the superintendent's recommendations and carefully considered the comments and rationales. This process was lengthy and transparent, with ample opportunity for public input.

COMMENT 16: Several comments were made in general support of requiring districts to establish mentoring and induction programs to assist licensed staff in meeting teaching standards as required in ARM 10.55.701(5), but many raised concerns that such programs will be time consuming, costly, and possibly an unfunded mandate.

Other commenters supported the requirement for a mentorship and induction program as being very valuable to get new teachers on the same page, up to speed and ready to provide high quality instruction from day one, with recognition that such programs come with a cost.

RESPONSE 16: The rules attempt to balance the investment of resources with the benefits of mentoring and induction programs for Montana educators and students. The details of implementation are left to the discretion of the local board of trustees as district resources allow.

COMMENT 17: The accreditation standards perpetuate an evaluation system comparable to NCLB.

RESPONSE 17: The evaluation process is not based on NCLB and AYP.

COMMENT 18: Several comments were received about "so many rumors [I] don't know what to believe." "Rumors" include: teacher evaluations will be made public; evaluations will be based on student test results; there will be little local

district discretion in developing an evaluation tool; the evaluation process will lose the creativity of the teachers; there will be an impact on labor negotiations; and concerns over who will do the evaluations, especially if there is no administrator/principal.

RESPONSE 18: A careful reading of the proposed rules regarding teacher and administrator evaluations does not give rise to any of the "rumors" circulating: Public disclosure of personnel evaluations is not contemplated or authorized by the amendments to these rules; evaluations are not tied to student test scores; districts have total discretion to develop evaluation instruments within the broad parameters of the rule; teacher creativity is encouraged; negotiations will have more structure with statewide, consistent parameters; and evaluations will be done by the same people who currently conduct them.

ARM 10.55.704 and 10.55.705

COMMENT 19: Several comments were received expressing concerns about staffing for administrators and principals in ARM 10.55.704 and 10.55.705.

RESPONSE 19: Different administrative staffing levels were considered. The proposed requirements for administrator and principal staffing for school systems with few licensed FTE reflect what the task force, superintendent and board believe are the best options available to the state's rural and small schools. The standards are minimum requirements and the local board of trustees may decide to provide administrators and principals beyond the minimum ratios required. Each local board of trustees has the discretion to exceed the minimum standards.

ARM 10.55.709 and 10.55.710

COMMENT 20: Commenters pointed out that the terms "district" and "school" were both used in ARM 10.55.709 and 10.55.710 and asked whether changes are necessary for consistency.

RESPONSE 20: The proposed language is as intended.

COMMENT 21: A commenter stated that ARM 10.55.709(2) should be amended to include schools with exactly 125 students, i.e. "fewer than 126 students" and the last sentence be moved to a separate new subsection (3) for clarification.

RESPONSE 21: The board agrees and amends the affected sections accordingly.

ARM 10.55.802

COMMENT 22: A commenter asked the board to include the terms "sexual orientation, gender identity and expression" to ARM 10.55.802.

RESPONSE 22: The board shares the concern over potential mistreatment, bullying, or harassment of any student and appreciates the interest in specifically identifying potentially targeted students as targets of abuse. ARM 10.55.802 is the purpose statement related to the accreditation standards generally. This rule references the Montana Constitution, Article II, section 4, including language related respecting human dignity of every person "with prejudice toward none." ARM 10.55.701 requires districts to adopt policies addressing bullying, intimidation, hazing, and harassment of students. ARM 10.55.719 requires districts to have comprehensive policies detailing student protection policies. Other state and federal laws require schools to protect students from discrimination which, in many instances, overlaps with bullying, intimidation, harassment, or hazing and provides for sanctions against schools who do not adequately address such incidents. While sexual orientation is not specifically identified in these rules, it is the intent of the board that sexual orientation, gender identity, and expression are covered by these rules and every student must be protected from bullying, harassment, intimidation, hazing, or discrimination.

### GENERAL COMMENTS

COMMENT 23: Many commenters expressed general opposition to increased demands on district resources and funds, and raised concerns over local flexibility and local control.

RESPONSE 23: The guiding principles of the task force included "balancing the needs of present and future Montana students with the realities of limited resources" and acknowledged "the role of local control." The accreditation standards are minimum requirements. Every local board of trustees has the discretion to exceed the standards.

Prior to adoption of the accreditation standards, the education and local government interim committee of the Legislature must review the fiscal impact of the proposed rules. These rules will not be implemented until July 1, 2013, after the Legislature has met and had an opportunity to fund any projected substantial fiscal impact "that cannot be readily absorbed in the budget of an existing school district program" pursuant to 20-7-101, MCA.

COMMENT 24: One commenter opposed any increase in collection of data.

RESPONSE 24: The proposed rules do not require any additional data collection or reporting and instead rely upon existing data collection/reports to accomplish the requirements in the rules.

4. The board has adopted the following rules as proposed:

NEW RULE I	ARM 10.55.607
NEW RULE II	ARM 10.55.719

5. The board has amended ARM 10.55.601, 10.55.702 through 10.55.708, 10.55.711, 10.55.713 through 10.55.717, 10.55.801 through 10.55.805, 10.55.901, 10.55.902, 10.55.904 through 10.55.910, 10.55.1001, and 10.55.1003 as proposed.

6. The board has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.55.602 DEFINITIONS For the purposes of this chapter, the following terms apply:

(1) through (6) remain as proposed.

(7) "Combined elementary-high school district" means an elementary district and a high school district, which are combined into a single school system for district administration purposes. ~~This may include school systems formed under governing joint boards of trustees depending on the programs and services agreed to by the participating local boards of trustees.~~

(8) through (19) remain as proposed.

(20) "Internship" as provided for in ARM 10.55.607 means an agreement ~~among~~ between a fully licensed Class 1, 2, or 3 educator, the school district, and a Montana accredited educator preparation program ~~as provided in ARM 10.55.607.~~ Internships are permitted in endorsement areas approved by the Board of Public Education in ARM 10.57.412 and 10.57.413.

(21) "K-12 district" as defined in 20-6-701, MCA means an elementary district, with the same district boundaries as a high school district, which has been attached to that high school district. The high school district remains an organized district and the elementary district is an inactive district pursuant to 20-6-701(1) ~~and (2)~~ 101, MCA.

(22) through (37) remain as proposed.

(38) "School district" means the territory, regardless of county boundaries, organized under the provisions of Title 20, MCA to provide public educational services under the jurisdiction of the local board of trustees. A high school district may encompass all or parts of the territory of one or more elementary districts. ~~A school district may also exist as the result of the formation of a joint board of trustees as provided by 20-3-361, MCA.~~ "School district" shall refer to all state-funded special purpose schools that are accredited under this chapter.

(39) remains as proposed.

(a) "combined elementary-high school district" means an elementary district and a high school district which are combined into a single school system for district administration purposes. ~~This may include school systems formed under the statute governing joint boards of trustees depending on the programs and services agreed to by the participating local boards of trustees.~~

(b) through (46) remain as proposed.

10.55.603 CURRICULUM AND ASSESSMENT (1) through (5)(c) remain as proposed.

(d) The Superintendent of Public Instruction shall provide technical assistance to districts to meet the criteria and procedures in ~~(3)~~ (5)(c).

10.55.604 VARIANCES TO STANDARDS (1) remains as proposed.

(a) In its application, the local board of trustees shall ~~describe~~ outline how and why its proposed variance would be workable, educationally sound, and designed to meet or exceed results under established standards and, where applicable, aligned with program standards under ARM 10.55.1101 through 10.55.1901.

(b) In its application, the school district shall provide evidence through official minutes of the board of trustees that local school community stakeholders were involved in the consideration and development of the proposed variance to standards. Stakeholder groups include trustees, administrators, teachers, classified school staff, parents, community members, and students as applicable. A district shall provide evidence it adopted its application for variance at an official, properly noticed meeting of its board of trustees.

~~(b)~~ (c) An application for variance to standards to take effect at the beginning of the academic year is due in writing to the Superintendent of Public Instruction no later than the first Monday in March. An application for variance to standards to take effect the second semester of the academic year is due in writing to the Superintendent of Public Instruction no later than the first Monday in July.

~~(c)~~ (d) Upon receipt, the Superintendent of Public Instruction shall refer applications for variance to standards to a pre-appointed review board appointed and facilitated by the Superintendent of Public Instruction. The review board shall provide its recommendations to the Superintendent of Public Instruction. The Superintendent of Public Instruction shall facilitate and provide organizational support for the meetings of the review board.

(i) The review board shall consist of the following, appointed by the Superintendent of Public Instruction from a list of qualifying individuals jointly endorsed by MEA-MFT, Montana Rural Education Association (MREA), Montana Small Schools Alliance (MSSA), School Administrators of Montana (SAM), and Montana School Boards Association (MTSBA): one trustee, one district superintendent, one high school principal, one elementary principal, two high school teachers, and two elementary school teachers.

(ii) As needed, the review board shall seek advice from experts.

(A) The Superintendent of Public Instruction shall solicit a pool of experts from curriculum groups and educational associations to serve "on call" in an advisory capacity.

(B) The Superintendent of Public Instruction shall notify the review board of the pool participants with rationale and present them for review board approval.

(C) The review board shall notify the Superintendent of Public Instruction when and what type of experts are needed.

(D) The Superintendent of Public Instruction shall notify the appropriate pool of experts of this needed input and arrange for the pool member(s) to advise the committee.

(iii) The review board members shall serve five year terms with no limit to the number of terms any one person may serve. Terms shall be staggered where half of all positions shall be filled every three years prior to the first meeting of the review board in the third year.



(e) The review board shall review all applications and use a uniform rubric, made available to districts in advance of applying to implement a variance to a standard or section of standards. The uniform rubric will ensure consistent and high quality applications from school districts across Montana.

(f) The review board shall provide its recommendations to the Superintendent of Public Instruction with a recommendation for approval, modification, or rejection of the review board's recommendation within 60 calendar days of the review board being referred an application.

~~(d)~~ (g) The Superintendent of Public Instruction shall provide the Board of Public Education with a recommendation for approval, modification, or rejection of the review board's recommendation.

(h) If the Superintendent of Public Instruction or review board finds an application to be preliminarily deficient, the superintendent shall advise the applicant school district why that application is not ready for consideration. The applicant district shall have the opportunity to change its application as suggested or submit it as originally proposed.

(2) The Board of Public Education shall approve or deny proposed variances to standards. If the board denies a proposed variance to standards, it shall remit in writing to the applicant school district why it has done so.

(3) through (6) remain as proposed.

(7) The Board of Public Education may subsequently renew the variance ~~for up to three-year intervals~~ provided the district continues to show how the variance meets or exceeds established standards.

(8) If the Superintendent of Public Instruction finds the alternative variance to standards is not working as intended or does not meet or exceed results that could be achieved under established standards, the superintendent shall recommend to the Board of Public Education that the variance be revoked.

(9) through (11)(e) remain as proposed.

10.55.605 CATEGORIES OF ACCREDITATION (1) Regular accreditation means the school has met the assurance standards and student performance standards as defined in ARM 10.55.606 and the Licensure Endorsement Requirements Related to Teaching Assignments, ~~adopted by the Board of Public Education July 2012~~, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> ~~(Appendix A)~~.

(2) Regular accreditation with minor deviations means the school does not meet all the requirements and standards required in (1) and delineated in the ~~Accreditation Procedures and Status Criteria, adopted by the Board of Public Education July 2012~~, Accreditation Status Criteria Reference Guide, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> ~~(Appendix B)~~.

(3) through (7) remain as proposed.

(8) A school with deficiency status failing to comply with the required corrective plan shall be placed into the intensive assistance process as defined in the ~~Accreditation Procedures and Status Criteria, adopted by the Board of Public Education July 2012~~, Accreditation Status Criteria Reference Guide, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> ~~(Appendix~~

B).

(9) and (10) remain as proposed.

10.55.606 ACCREDITATION PROCESS (1) through (3) remain as proposed

(4) For schools with any combination of grades only K-2, only the assurance standards will be used to determine accreditation status.

(5) There shall be four levels for assurance standards and student performance standards used to determine accreditation status, as described in the ~~Accreditation Procedures and Status Criteria, adopted by the Board of Public Education July 2012,~~ Accreditation Status Criteria Reference Guide, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> (Appendix B). The highest level is 1 and the lowest level is 4.

(6) through (9) remain as proposed.

10.55.701 BOARD OF TRUSTEES (1) through (3) remain as proposed.

(4) The local board of trustees shall have written policies and procedures for regular and periodic evaluation of all regularly employed personnel. The individual evaluated shall have access to a copy of the evaluation instrument, the opportunity to respond in writing to the completed evaluation, and access to his or her files. Personnel files shall be confidential.

~~(a) The evaluation system for licensed teachers used by a school district shall include an assessment of the extent to which the teacher:~~

~~(i) understands how learners grow and develop, recognizing that patterns of learning and development vary individually within and across cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences;~~

~~(ii) uses understanding of individual differences and diverse cultures and communities, including American Indians and tribes in Montana, to ensure inclusive environments that enable each learner to meet high standards;~~

~~(iii) works with others to create environments that support individual and collaborative learning and that encourage positive social interaction, active engagement in learning, and self-motivation;~~

~~(iv) understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make the discipline accessible and meaningful for learners to assure mastery of the content;~~

~~(v) understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues;~~

~~(vi) understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision-making;~~

~~(vii) plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills, and pedagogy, as well as knowledge of learners and the community context;~~

~~(viii) understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways;~~

~~(ix) engages in ongoing professional learning and uses evidence to continually evaluate his or her practice, particularly in the effects of his or her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner;~~

~~(x) seeks appropriate leadership roles and opportunities to take responsibility for student learning, to collaborate with learners, families, colleagues, other school professionals, and community members to ensure learner growth, and to advance the profession; and~~

~~(xi) demonstrates understanding of and ability to integrate history, cultural heritage, and contemporary status of American Indians and tribes in Montana.~~

~~(b) The evaluation system for licensed administrators used by a school district shall include an assessment of the extent to which the administrator:~~

~~(i) facilitates the development, articulation, implementation, and stewardship of a school or district vision of teaching and learning supported by the school community in order to promote the success of all students;~~

~~(ii) promotes a positive school culture, provides an effective instructional program, applies best practice to student learning, and designs comprehensive professional growth plans for staff in order to promote the success of all students;~~

~~(iii) manages the organization, operations, and resources in a way that promotes a safe, efficient, and effective learning environment in order to promote the success of all students;~~

~~(iv) collaborates with faculty, families, and other community members, responds to diverse community interests and needs, including American Indian communities in Montana, and mobilizes community resources in order to promote the success of all students;~~

~~(v) acts with integrity, fairness, and in an ethical manner in order to promote the success of all students; and~~

~~(vi) understands, responds to, and ethically influences the larger political, social, economic, legal, and cultural context in order to promote the success of all students.~~

(a) The evaluation system used by a school district for licensed staff shall, at a minimum:

(i) be conducted on at least an annual basis with regard to nontenure staff and according to a regular schedule adopted by the district for all tenure staff;

(ii) be aligned with applicable district goals, standards of the Board of Public Education, and the district's mentorship and induction program required under ARM 10.55.701(8)(c);

(iii) identify what skill sets are to be evaluated;

(iv) include both formative and summative elements; and

(v) include an assessment of the educator's effectiveness in supporting every student in meeting rigorous learning goals through the performance of the educator's duties.

(b) The Superintendent of Public Instruction shall develop and publish model evaluation instruments that comply with this rule in collaboration with the MEA-MFT, Montana Rural Education Association, Montana School Boards Association, School Administrators of Montana, and Montana Small School Alliance. A school district adopting and using one of the model instruments shall be construed to have

complied with this rule, though use of one of the models shall not be required provided that the district's evaluation instrument and process substantially conforms to the requirements set forth in this section.

(5) remains as proposed.

10.55.709 LIBRARY MEDIA SERVICES, K-12 (1) remains as proposed.

(2) Schools of fewer than ~~425~~ 126 students shall employ or contract with a licensed and endorsed school library media specialist.

(3) If a district has fewer than ~~425~~ 126 students, the district may utilize a consortium, multidistrict agreement, or interlocal cooperative to secure these services.

10.55.710 ASSIGNMENT OF SCHOOL COUNSELING STAFF (1) and (2) remain as proposed.

(3) Districts with fewer than ~~425~~ 126 students may employ or contract with a licensed, endorsed school counselor or Class 6 specialist or utilize a consortium, multidistrict agreement, or interlocal cooperative to secure these services.

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 10.56.101 relating to )  
assessment )

TO: All Concerned Persons

1. On July 26, 2012, the Board of Public Education published MAR Notice No. 10-56-263 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1440 of the 2012 Montana Administrative Register, Issue Number 14.

2. The board has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Peter Donovan  
Peter Donovan  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )  
17.8.801 and 17.8.818, pertaining to )  
definitions and review of major stationary )  
sources and major modifications--source )  
applicability and exemptions )

NOTICE OF AMENDMENT  
  
(AIR QUALITY)

TO: All Concerned Persons

1. On June 7, 2012, the Board of Environmental Review published MAR Notice No. 17-334 regarding a notice of public hearing on proposed amendment of the above-stated rules at page 1098, 2012 Montana Administrative Register, issue number 11.

2. The board has amended the rules exactly as proposed.

3. The department submitted testimony at the rule hearing on July 12, 2012. In preparing its testimony for the rule hearing, DEQ noticed clerical errors in the statement of reasonable necessity concerning citations to federal laws and regulations. The department submitted testimony at the hearing to correct these clerical errors. The clerical corrections are as follows, stricken matter interlined, new matter underlined:

REASON: The board is proposing amendments to Montana's prevention of significant deterioration (PSD) rules to conform the rules to amendments to federal regulations by the federal Environmental Protection Agency (EPA) in 2005. The federal Clean Air Act, 42 USC 7401 through 7671q (CAA), directs each state to assure that air quality in that state meets minimum standards applicable across the nation. The CAA directs the EPA to establish National Ambient Air Quality Standards (NAAQS) for air pollutants that meet certain criteria regarding effects on public health and welfare. Pursuant to the CAA, EPA has authorized the state of Montana to regulate major sources in the state. For Montana to retain this authority, the board is required to adopt the minimum standards applicable to major source emissions of a NAAQS pollutant whenever a NAAQS is established or revised 40 USC ~~7410(G)~~ 7410(a)(2)(C).

On November 29, 2005, EPA published regulations regarding the implementation of the 1997 ozone NAAQS (70 CFR 71612). Those regulations required revisions to state programs for major source permitting. One of the requirements in the EPA regulations was to address ozone formation by regulating precursor pollutants. "Precursor pollutants" are pollutants that combine to form another pollutant. The federal regulations include nitrogen oxides (NO<sub>x</sub>) that react with volatile organic compounds to form ozone. In a decision published on ~~May 19~~ July 22, 2011, in the Federal Register at 76 FR 28934 43918, EPA found Montana's PSD rules for ozone inadequate because the rules do not address NO<sub>x</sub> as a precursor pollutant for ozone. The proposed amendments in this notice would

address EPA's concerns and make Montana's rules for PSD permits adequate to implementing the 1997 8-hour ozone NAAQS.

The remainder of the statement of reasonable necessity remains as set forth in the Notice of Public Hearing on Proposed Amendment.

4. No public comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North  
JOHN F. NORTH  
Rule Reviewer

By: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.  
Chairman

Certified to the Secretary of State, October 1, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF AMENDMENT AND
17.24.645, 17.24.646, 17.30.502, )	REPEAL
17.30.602, 17.30.619, 17.30.629, )	
17.30.635, 17.30.637, 17.30.702, )	(RECLAMATION)
17.30.1001, 17.36.345, 17.55.109, )	(WATER QUALITY)
17.56.507, and 17.56.608 pertaining to )	(SUBDIVISIONS)
Department Circular DEQ-7, definitions, )	(CECRA)
incorporations by reference, C-3 )	(UNDERGROUND STORAGE
classification standards, general )	TANKS)
treatment standards, and general )	
prohibitions, and the repeal of ARM )	
17.30.616 and 17.30.658 pertaining to )	
water-use classification and descriptions )	
for ponds and reservoirs constructed for )	
the disposal of coal bed methane water )	
and G-1 classification standards )	

TO: All Concerned Persons

1. On June 7, 2012, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-335 regarding a notice of public hearing on the proposed amendment and repeal of the above-stated rules at page 1103, 2012 Montana Administrative Register, issue number 11.

2. The board and department have amended ARM 17.30.602, 17.30.629, 17.30.635, and 17.30.637 and repealed ARM 17.30.616 and 17.30.658 exactly as proposed and have amended ARM 17.24.645, 17.24.646, 17.30.502, 17.30.619, 17.30.702, 17.30.1001, 17.36.345, 17.55.109, 17.56.507, and 17.56.608 as proposed, but with the following changes:

17.24.645 GROUND WATER MONITORING (1) through (5)(c) remain as proposed.

(6) Methods of sample collection, preservation, and sample analysis must be conducted in accordance with 40 CFR Part 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 2003) and the department's document titled "Department Circular DEQ-7, Montana Numeric Water Quality Standards," ~~August~~ October 2012 edition. Copies of Department Circular DEQ-7 are available at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) and (8) remain as proposed.



17.24.646 SURFACE WATER MONITORING (1) through (5) remain as proposed.

(6) Methods of sample collection, preservation and sample analysis must be conducted in accordance with 40 CFR Part 136 titled "Guidelines Establishing Test Procedures for the Analysis of Pollutants" (July 2003) and Part 434 titled "Coal Mining Point Source Category BPT, BAT, BCT Limitations and New Source Performance Standards" (January 2002), and the ~~August~~ October 2012 edition of the department's document titled "Department Circular DEQ-7, Montana Numeric Water Quality Standards." Copies of 40 CFR Part 136, 40 CFR 434, and Department Circular DEQ-7 are available at the Department of Environmental Quality, 1520 E. 6th Ave., P.O. Box 200901, Helena, MT 59620-0901. Sampling and analyses must include a quality assurance program acceptable to the department.

(7) remains as proposed.

17.30.502 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, and ARM Title 17, chapter 30, subchapters 6 and 7, apply throughout this subchapter:

(1) through (13) remain as proposed.

(14) The board adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August~~ October 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters. Copies of Department Circular DEQ-7 are available from the Department of Environmental Quality, P.O. Box 200901, Helena, MT 59620-0901.

17.30.619 INCORPORATIONS BY REFERENCE (1) The board adopts and incorporates by reference the following state and federal requirements and procedures as part of Montana's surface water quality standards:

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August~~ October 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) through (2) remain as proposed.

17.30.702 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter (Note: 75-5-103, MCA, includes definitions for "degradation," "existing uses," "high quality waters," "mixing zone," and "parameter"):

(1) through (25) remain as proposed.

(26) The board adopts and incorporates by reference:

(a) Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August~~ October 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters;

(b) through (d) remain as proposed.

17.30.1001 DEFINITIONS The following definitions, in addition to those in 75-5-103, MCA, apply throughout this subchapter:

(1) remains as proposed.

(2) "DEQ-7" means Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August~~ October 2012 edition), which establishes water quality standards for toxic, carcinogenic, radioactive, bioconcentrating, nutrient, and harmful parameters.

(a) The board adopts and incorporates by reference Department Circular DEQ-7, entitled "Montana Numeric Water Quality Standards" (~~August~~ October 2012 edition), which establishes water quality standards for toxic, carcinogenic, bioconcentrating, nutrient, radioactive, and harmful parameters.

(3) through (15) remain as proposed.

17.36.345 ADOPTION BY REFERENCE (1) For purposes of this chapter, the department adopts and incorporates by reference the following documents. All references to these documents in this chapter refer to the edition set out below:

(a) through (d) remain as proposed.

(e) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~August~~ October 2012 edition);

(f) through (2) remain as proposed.

17.55.109 INCORPORATION BY REFERENCE (1) For the purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, Montana Numeric Water Quality Standards (~~August~~ October 2012 edition);

(b) through (5) remain as proposed.

17.56.507 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~August~~ October 2012 edition);

(b) through (3) remain as proposed.

17.56.608 ADOPTION BY REFERENCE (1) For purposes of this subchapter, the department adopts and incorporates by reference:

(a) Department Circular DEQ-7, "Montana Numeric Water Quality Standards" (~~August~~ October 2012 edition);

(b) through (3) remain as proposed.

3. The following comments were received and appear with the board's and department's responses:

#### Interim Standards for Pesticides

COMMENT NO. 1: Overly stringent standards can take an economic toll on Montanans. Interim criteria shouldn't be too stringent or they can create a business burden and hurt Montana's economy.

RESPONSE: The department uses the most current available research for developing an interim health advisory when a federal standard does not already exist. The process for deriving the standard is fixed by EPA guidance. If the final standard is much less stringent than an interim standard, it is in response to new health studies. The same calculations are used in developing the state interim and potential future EPA standards. The only changes being made are the health studies selected for use in the calculations.

#### Revisions to the Categories for 12 Parameters

COMMENT NO. 2: Chlorite--The new human health standard for chlorite may increase the level of treatment necessary prior to discharging effluent from waste water treatment plants. Additional sampling and analysis would be a burden.

RESPONSE: Chlorite is used in a number of water treatment facilities for disinfection. In 2010, EPA Region 8 requested that the department evaluate this new criterion. The Integrated Risk Information System (IRIS) (2000) provides a reference dose (RfD) of 30 µg/kg-day and cites altered liver weights and impaired maturation in mice as evidence of toxicological impact. Confidence in the oral RfD assessment was medium to high and the database was rated as having high confidence. While there may be additional costs associated with the permit requirement to monitor this parameter, the establishment of a standard is appropriate to protect human health.

COMMENT NO. 3: Phenol--Reclassifying phenol as a toxic parameter will result in tighter regulations for Montana Pollutant Discharge Elimination System permit holders and may require additional treatment and control for removal of the parameter. Phenol is already regulated through whole effluent toxicity testing and additional regulations are not necessary. Additionally, recategorization of phenol to toxic will mandate more stringent standards under Montana's nondegradation rules.

RESPONSE: Since 1988, phenol has had an oral toxicity limit. Currently, the RfD established by the EPA and published in IRIS (2002) is at 300 µg/kg-day. Phenol is a toxin with proven impact to the kidneys and reproductive survival in mice. The number of studies conducted and the quality of the studies allows the EPA to conclude that the confidence in the oral RfD and the database used in its derivation is medium to high. Because phenol is a toxic parameter, it is appropriate that its exposure be limited more stringently than a harmful parameter.

COMMENT NO. 4: Tetrachloroethylene (PCE)--EPA informed the board of updated information in IRIS regarding PCE that indicates it should remain in the carcinogen category.

RESPONSE: Recent updates to IRIS, released in February of 2012, show that PCE is a carcinogen. Consequently, PCE will remain listed as a carcinogen.

COMMENT NO. 5: Cadmium--Change in the classification of cadmium is not supported because IRIS classification is based on inhalation of cadmium dust or fumes, not ingestion. Cadmium is listed as a carcinogen when inhaled, but not ingested, so it should not be classified as a carcinogen for water quality standards.

It is necessary to look at dosage and exposure pathway for standards. Additionally, the aquatic life standard and the Required Reporting Value (RRV) for cadmium are very low. Application of nondegradation rules to cadmium as a carcinogen with the low standard and RRV would result in the allowance of no cadmium detections in effluents. This would be a significant problem, since cadmium is ubiquitous in the environment and may be detected in effluents.

RESPONSE: A full review of the categorization of cadmium has revealed that it is inappropriate to consider an oral route of carcinogenic exposure for cadmium. Although a portion of the inhalatory route of cadmium exposure is calculated based on inhalation of water vapor, no independent cancer slope has been developed for either food ingestion or water intake. Consequently, the categorization of cadmium will be left as toxic.

COMMENT NO. 6: Category assignments in Department Circular DEQ-7 (DEQ-7) affect application of nondegradation rules. EPA recommends defining significance thresholds for nondegradation in terms of assimilative capacity and a significance threshold value of 10% or less of the available assimilative capacity on a cumulative basis. EPA recommends updating nondegradation requirements to be consistent with their recommendation.

RESPONSE: The comment is outside the scope of the current rulemaking. If and when the board proposes changes to the nondegradation rules, EPA's comments will be considered.

#### Required Reporting Values

COMMENT NO. 7: Required Reporting Values (RRVs) established through the use of ultrapure lab standards may not be appropriate for "real-world" samples and don't reflect real-world effluents with matrix effects. Matrix interference from effluent characteristics will increase the reporting limit for a sample and may prevent achieving low levels. Commentors requested a study on real-world samples.

RESPONSE: Matrix interference in a sample will increase the reporting limit for the sample. Laboratories have routine procedures for adding comments to the data report if the reporting limits are increased due to matrix interference. These procedures should be followed when this occurs.

COMMENT NO. 8: Permit limits may be well above standards, and RRVs, and analyzing down to the RRVs would provide no benefit and would be expensive. Commentor suggested including language in DEQ-7 indicating that alternate reporting levels may be acceptable.

RESPONSE: The RRV is the reporting limit that a laboratory must be able to achieve to meet the most stringent standard in DEQ-7. The department has latitude when establishing reporting limits in permits that may contain effluent limits above the numeric water quality standards found in DEQ-7. It is the responsibility of the individual requesting the analysis to ensure that appropriate methods and reporting limits are requested from the laboratory to meet analytical and reporting limit needs.

COMMENT NO. 9: If the department requires RRV compliance of all samplers regardless of the analytical method and numeric standard applied to the sample, inappropriate equipment and lab techniques may result in inconsistent results between labs. Commentor recommends conducting RRV studies with real-world effluents and labs located in state.

RESPONSE: RRVs do not encourage labs to provide substandard quality. The individual submitting samples is responsible for ensuring that the appropriate analytical method and laboratory reporting limit are requested from the lab based on his or her sampling requirement. If the laboratory cannot perform the method, the routine practice is to subcontract the work to a laboratory that can. If the appropriate reporting limit cannot be achieved, the laboratory should discuss this with the individual submitting the sample and the sample can either be subcontracted to another laboratory that can achieve this level or the laboratory can report the value as closely as possible to the RRV and qualify data (by comment in the analytical report) that is reported below the lowest calibration standard.

#### Repealing References to the Narrative Water Quality Standard for Nutrients in Surface Waters

COMMENT NO. 10: Commentors disagree with removing reference to the narrative nutrient standard and incorporating Department Circular DEQ-12 (DEQ-12) by reference. They are concerned that removing the narrative reference will prematurely drive adoption of numeric standards in DEQ-12. Removal of the narrative standard reference should be done when rulemaking is initiated on DEQ-12.

RESPONSE: It is appropriate to remove the reference to DEQ-12 until its formal adoption. DEQ-7 is the site for numeric water quality standards, and while deletion of the reference to the nutrient narrative standard in DEQ-7 was proposed, repeal of the narrative standard in rule was not. To eliminate confusion, until numeric standards are adopted, inorganic nitrogen and phosphorus and Footnote (8) will remain in DEQ-7 unchanged.

#### Removing Manganese and Eliminating References to Secondary Maximum Contaminant Levels (SMCLs)

COMMENT NO. 11: Commentor is opposed to the proposed amendment to delete Footnote (24) regarding the secondary maximum contaminant levels (SMCLs) from DEQ-7 and believes that the department should develop a health based standard for manganese. Commentor believes that "little or no treatment" in the narrative standards should be defined.

RESPONSE: The values for manganese provided in the footnote are guidance from EPA SMCLs and are not numeric standards. DEQ-7 is the circular that contains numeric water quality standards and, as such, the use of a secondary guidance value is inappropriate as part of its content. The footnote is reserved for future use relative to a Montana human health standard for manganese currently under development. There is growing evidence that manganese, at levels below the current EPA health advisory levels, may be harmful to infant neurological

development. The department is working with the researchers and the EPA to develop a health advisory standard for the state of Montana.

COMMENT NO. 12: Commentor requests that the board direct the department to pursue cleanup and installation of water treatment at sites where contaminants have been disposed of, resulting in manganese affecting the drinking water quality in nearby domestic water supplies.

RESPONSE: This comment is outside the scope of this rulemaking.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

By: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.  
Chairman

Certified to the Secretary of State, October 1, 2012.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM )	NOTICE OF AMENDMENT
17.30.1001, 17.30.1022, 17.36.345, )	
17.36.914, 17.38.101, 17.38.102, )	(WATER QUALITY)
17.38.103, 17.38.106, 17.50.811, )	(SUBDIVISIONS/ON-SITE
17.50.815, and 17.50.819 pertaining to )	SUBSURFACE WASTEWATER
definitions, exclusions from permit )	TREATMENT)
requirements, subdivisions, wastewater )	(PUBLIC WATER AND SEWAGE
treatment systems, plans for public water )	SYSTEM REQUIREMENTS)
supply or wastewater system, fees, )	(SOLID WASTE MANAGEMENT)
operation and maintenance )	
requirements for land application or )	
incorporation of septage, grease trap )	
wastes, and incorporation by reference )	

TO: All Concerned Persons

1. On June 21, 2012, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-336 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1169, 2012 Montana Administrative Register, issue number 12.
2. The board and the department have amended the rules exactly as proposed.
3. No public comments or testimony were received.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ James M. Madden  
JAMES M. MADDEN  
Rule Reviewer

By: /s/ Joseph W. Russell  
JOSEPH W. RUSSELL, M.P.H.  
Chairman

Certified to the Secretary of State, October 1, 2012.

BEFORE THE DEPARTMENT OF LIVESTOCK  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 32.2.403 pertaining to diagnostic )  
laboratory fees )

TO: All Concerned Persons

1. On July 26, 2012, the Department of Livestock published MAR Notice No. 32-12-226 regarding the proposed amendment of the above-stated rule at page 1445 of the 2012 Montana Administrative Register, issue number 14.

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

32.2.403 DIAGNOSTIC LABORATORY FEES (1) through (3)(b)(ix) remain as proposed.

(x) LA electrolyte panel (Na, k, CL, TCO<sub>2</sub>, Ca, Mg, PO<sub>4</sub>) \$12.00

(c) through (12)(b)(ii) remain as proposed.

(ii) and (iii) remain as proposed but are renumbered (iii) and (iv).

(c) through (o) remain as proposed.

~~(p) Johne's [Paratuberculosis] (AGID, .05cc serum) \$11.00~~

(q) through (y) remain as proposed but are renumbered (p) through (x).

(13) through (18) remain as proposed.

AUTH: 81-1-10, 81-2-102, MCA

IMP: 81-1-301, 81-1-302, 81-2-102, MCA

3. No testimony or comments were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay

Christian Mackay

Executive Officer

Department of Livestock

/s/ George H. Harris

George H. Harris

Rule Reviewer

Certified to the Secretary of State October 1, 2012.



BEFORE THE DEPARTMENT OF LIVESTOCK  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 32.3.212 pertaining to additional )  
requirements for cattle )

1. On July 26, 2012, the Department of Livestock published MAR Notice No. 32-12-227 regarding the proposed amendment of the above-stated rule at page 1462 of the 2012 Montana Administrative Register, issue number 14.

2. The Department has amended the following rule as proposed, but with the following change from the original proposal, new matter underlined, deleted matter interlined:

32.3.212 ADDITIONAL REQUIREMENTS FOR CATTLE (1) and (2) remain as proposed.

(3) Test-eligible cattle originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test ~~performed by an accredited veterinarian~~ within 60 days prior to importation if they:

(a) and (b) remain as proposed.

~~(c) are originally from Mexico; or~~

(d) and (e) remain as proposed but are renumbered (c) and (d).

(4) Sporting bovines originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test ~~performed by an accredited veterinarian~~ within six months prior to importation if they:

(a) through (c) remain as proposed.

(5) Test-eligible cattle that are dairy cattle, sporting bovines, or sexually intact beef cattle originating from a tuberculosis modified accredited advanced U.S. state or zone, ~~or from outside the United States~~, must meet one of the following:

(a) through (d) remain as proposed.

(6) and (7) remain as proposed but are renumbered (13) and (14).

~~(8)~~ (6) Test-eligible cattle that are dairy cattle, sporting bovines, or sexually intact beef cattle originating from a tuberculosis modified accredited U.S. state or zone must meet one of the following requirements:

(a) through (c) remain as proposed.

(7) Test eligible cattle that are dairy cattle, sporting bovines, or sexually intact beef cattle originating from outside of the United States must have one negative tuberculosis test within 60 days prior to importation. Cattle or bison originating directly from Mexico must meet the requirements set forth in ARM 32.3.212B.

(9) through (11) remain as proposed but are renumbered (8) through (10).

(12) remains as proposed but is renumbered (15).

(13) and (14) remain as proposed but are renumbered (11) and (12).

AUTH: 81-2-102, 81-2-103, 81-2-707, MCA

IMP: 81-2-102, 81-2-703, MCA

REASON: Section 81-2-102, MCA requires that official orders last no more than five years. Changes in ARM 32.3.212 incorporate outdated official orders. The proposed rule revision further clarifies the rule.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay  
Christian Mackay  
Executive Officer  
Board of Livestock  
Department of Livestock

BY: /s/ George H. Harris  
George H. Harris  
Rule Reviewer

Certified to the Secretary of State October 1, 2012.

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

In the matter of the amendment of ARM	)	NOTICE OF AMENDMENT
36.12.101, 36.12.102, 36.12.103,	)	
36.12.107, 36.12.120, 36.12.121,	)	
36.12.1301, 36.12.1401, 36.12.1601,	)	
36.12.1701 through 36.12.1706,	)	
36.12.1801, 36.12.1901 through	)	
36.12.1904, 36.12.2001 regarding water	)	
right permitting	)	

To: All Concerned Persons

1. On July 26, 2012, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-165 regarding a notice of public hearing on the proposed amendment to the above-stated rules at page 1465 of the 2012 Montana Administrative Register, Issue No. 14.

2. The department has amended ARM 36.12.102, 36.12.103, 36.12.107, 36.12.120, 36.12.121, 36.12.1401, 36.12.1601, 36.12.1701, 36.12.1703, 36.12.1801, 36.12.1901, 36.12.1904, and 36.12.2001 as proposed.

3. The department has amended ARM 36.12.101, 36.12.1301, 36.12.1702, 36.12.1704, 36.12.1705, 36.12.1706, 36.12.1902, 36.12.1903 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (50) remain as proposed.

(51) "Pre-application review" means the applicant or the applicant's attorney or consultant or others who may know about the proposed project have met with the department in person, via teleconference, or via video conference to discuss details of the proposed project and application.

(52) through (79) remain as proposed.

36.12.1301 PERMIT AND CHANGE APPLICATION ACCEPTANCE

(1) through (1)(f) remain as proposed.

(g) the applicant's signature;

(g) through (i) remain as proposed but are renumbered (h) through (j).

(2) remains as proposed.

36.12.1702 PERMIT APPLICATION CRITERIA - PHYSICAL SURFACE  
WATER AVAILABILITY

(1) through (4)(a) remain as proposed.

(b) If it is not possible to take measurements every month due to high spring flow conditions or other limiting conditions approved by the department, at least one measurement must be collected during the lowest flow period.

(c) through (6) remain as proposed.

**36.12.1704 PERMIT APPLICATION - EXISTING LEGAL DEMANDS**

(1) and (2) remain as proposed.

(a) For groundwater appropriations, this shall include identification of existing legal demands for any surface water source in which water flow could be reduced by any amount that could be depleted as a result of the groundwater appropriation.

**36.12.1705 PERMIT APPLICATION CRITERIA - COMPARISON OF PHYSICAL WATER AVAILABILITY AND EXISTING LEGAL DEMANDS**

(1) remains as proposed

(2) For groundwater appropriations, in addition to (1) the department will compare the physical water supply for any surface water source in which water flow could be reduced by any amount that could be depleted as a result of the groundwater appropriation and the legal demands within the area of potential impact.

**36.12.1706 PERMIT APPLICATION CRITERIA - ADVERSE EFFECT**

(1) through (3) remain as proposed.

(4) For groundwater applications, the department will evaluate how water levels in wells of prior water rights could be lowered and the rate, timing, and location where water flow could be reduced by any amount from hydraulically connected surface waters.

**36.12.1902 CHANGE APPLICATION - HISTORIC USE**

(1) through (16) remain as proposed.

**Table 1 - Montana County Weather Station IWR Data for Seasonal Alfalfa Evapotranspiration and Montana County Management Factor.**

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage <del>1997 - 2006</del>
Beaverhead	Dillon	5239	18.34	20.74	63.7%	<del>88.3%</del>
	Wisdom	6060	7.34	9.29		
	Jackson	6480	8.35	10.30		
	Lakeview	6710	8.39	10.67		
	Lima	6583	13.75	16.01		
Big Horn	Busby	3430	20.32	22.88	55.4%	<del>88.1%</del>
	Hardin	2905	27.46	29.96		

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage 1997-2006
	Hysham 25	3100	20.25	22.86		
	Wyola	3750	19.19	21.89		
	Yellowtail Dam	3305	28.07	31.30		
Blaine	Chinook	2420	20.80	23.57	58.7%	66.0%
	Harlem	2362	21.62	24.27		
Broadwater	Townsend	3840	19.42	21.88	69.2%	87.1%
	Trident	4040	20.64	23.31		
Carbon	Joliet	3776	22.41	25.12	58.3%	70.8%
	Red Lodge	5500	15.57	18.41		
Carter	Ekalaka	3425	20.13	23.14	38.4%	54.1%
	Ridgeway	3320	20.28	23.01		
Cascade	Cascade 20	4600	14.12	16.63	57.3%	78.8%
	Cascade 5	3360	17.90	20.75		
	Great Falls	3675	19.78	22.55		
	Neihart	4945	12.17	15.08		
	Sun River	3340	18.10	20.65		
Chouteau	Big Sandy	2700	21.52	24.37	52.5%	78.3%
	Fort Benton	2640	21.98	24.75		
	Geraldine	3130	20.30	23.27		
	Iliad	2950	21.55	24.27		
	Loma	2700	22.64	25.37		
	Shonkin	4300	13.32	16.70		
Custer	Miles City	2628	26.68	29.55	54.5%	81.1%
	Mizpah	2480	23.80	26.57		
	Powderville	2800	24.83	27.68		
Dawson	Glendive	2076	26.01	28.99	56.8%	72.0%
Deer Lodge	No weather station				See appropriate adjacent county	
Fallon	Plevna	2780	22.48	25.34	47.6%	47.6%
Fergus	Denton	3620	15.39	18.12	48.8%	68.3%
	Grass Range	3490	18.93	21.93		
	Lewistown	4167	15.54	18.44		
	Roy	3450	19.94	22.78		
	Winifred	3240	17.86	20.75		
Flathead	Creston	2949	14.97	17.81	87.6%	96.6%
	Hungry	3160	14.66	18.06		

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage 1997-2006
	Horse Dam					
	Kalispell	2972	16.45	19.03		
	Olney	3165	12.50	15.16		
	Polebridge	3600	10.20	12.50		
	West Glacier	3154	13.74	16.78		
	Whitefish	3100	15.74	18.61		
Gallatin	Bozeman Exp Farm	4775	16.84	19.55	73.5%	98.6%
	Bozeman MT State	4913	18.42	21.39		
	Hebgen Dam	6667	10.09	12.77		
Garfield	Cohagen	2710	22.36	24.99	43.4%	46.1%
	Jordan	2661	23.58	26.32		
	Mosby	2750	24.51	27.34		
Glacier	Babb	4300	12.12	14.87	59.7%	73.9%
	Cut Bank	3855	16.01	18.60		
	Del Bonita	4340	14.61	17.30		
	East Glacier	4810	10.60	13.26		
	St Mary	4560	13.64	16.60		
Golden Valley	Ryegate	4440	17.60	20.17	62.6%	64.6%
Granite	Philipsburg Ranger Station	5270	12.90	15.26	86.5%	96.6%
Hill	Fort Assinniboine	2613	22.42	25.20	54.1%	60.4%
	Guilford	2820	19.54	22.06		
	Havre	2585	20.94	23.46		
	Simpson	2815	19.67	22.13		
Jefferson	Boulder	4904	17.08	19.47	61.0%	81.1%
Judith Basin	Moccasin Exp Station	4243	16.17	19.06	49.3%	68.8%
	Raynesford	4220	16.14	19.05		
	Stanford	4860	16.74	19.69		
Lake	Bigfork	2910	17.37	20.61	55.0%	68.7%
	Polson	2949	20.46	23.23		
	Polson Kerr Dam	2730	21.37	24.08		
	St Ignatius	2940	19.53	22.33		

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>	<b>Column G</b>
<b>County</b>	<b>Weather Station</b>	<b>Elevation</b>	<b>IWR Flood Irrigation, Wheeline &amp; Handline Seasonal ET (inches)</b>	<b>IWR Center Pivot Irrigation Seasonal ET (inches)</b>	<b>Management Factor Percentage 1964 - 1973</b>	<b>Management Factor Percentage 1997-2006</b>
Lewis & Clark	Augusta	4070	17.51	20.13	60.1%	<del>79.7%</del>
	Austin	4790	15.41	17.96		
	Helena	3828	20.23	22.69		
	Holter Dam	3490	23.88	26.61		
	Lincoln Ranger Station	4575	12.87	15.22		
Liberty	Chester	3132	19.28	21.74	54.8%	<del>63.9%</del>
	Joplin	3300	19.01	21.40		
	Tiber Dam	2850	22.98	25.46		
Lincoln	Eureka Ranger Station	2532	20.63	23.26	47.1%	<del>58.8%</del>
	Fortine	3000	16.09	18.69		
	Libby Ranger Station	2096	21.20	23.71		
	Libby	3600	11.06	13.36		
	Troy	1950	19.90	22.68		
Madison	Alder	5800	14.33	16.75	65.2%	<del>83.3%</del>
	Ennis	4953	17.19	19.71		
	Glen	5050	17.81	20.01		
	Norris	4750	20.88	23.97		
	Twin Bridges	4777	16.98	19.22		
	Virginia City	5770	15.57	18.13		
McCone	Brockway	2630	20.74	23.35	43.7%	<del>60.6%</del>
	Circle	2480	22.23	25.01		
	Fort Peck Power Plant	2070	25.37	28.16		
	Vida	2400	21.74	24.65		
Meagher	Lenep	5880	11.93	14.38	57.3%	<del>78.3%</del>
	Martinsdale	4800	15.19	17.73		
	White Sulpher Spr	5060	16.41	18.89		
Mineral	St Regis Ranger Stn	2680	17.61	20.05	56.1%	<del>63.6%</del>
	Superior	2710	21.94	24.54		
Missoula	Lindbergh Lake	4320	14.63	17.22	69.5%	<del>69.5%</del>
	Missoula	3420	18.85	21.49		

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage 1997-2006
	Missoula WSO AP	3199	19.45	21.89		
	Potomac	3620	14.05	16.26		
	Seeley Lake Ranger Station	4100	14.86	17.31		
Musselshell	Melstone	2920	24.22	27.17	50.0%	56.2%
	Roundup	3386	23.98	26.79		
Park	Cooke City	7460	8.68	11.63	56.9%	67.5%
	Gardiner	5275	22.46	24.70		
	Livingston	4870	16.59	19.41		
	Livingston FAA AP	4656	18.63	21.39		
	Wilsall	5840	13.20	16.01		
Petroleum	Flatwillow	3133	22.27	25.01	44.0%	43.2%
Phillips	Content	2340	21.15	23.97	54.7%	54.9%
	Malta 35	2650	20.28	22.99		
	Malta 7	2262	21.61	24.39		
	Port of Morgan	2830	20.15	22.72		
	Saco	2180	20.13	22.70		
	Zortman	4660	14.38	17.40		
Pondera	Conrad	3550	16.93	19.42	71.4%	83.7%
	Valier	3810	18.31	20.96		
Powder River	Biddle	3597	21.87	24.66	38.5%	53.3%
	Broadus	3032	23.03	25.69		
	Moorhead	3220	23.72	26.42		
	Sonnette	3900	18.32	20.96		
Powell	Deer Lodge	4678	13.14	15.32	77.6%	100.0% <sup>4</sup>
	Ovando	4109	12.28	14.43		
Prairie	Mildred	2510	22.92	25.58	59.6%	84.3%
	Terry	2248	22.82	25.47		
	Terry 21	3260	18.65	21.34		
Ravalli	Darby	3880	18.91	21.44	79.5%	96.1%
	Hamilton	3529	19.93	22.34		
	Stevensville	3380	19.19	21.44		
	Sula	4475	12.09	14.42		
	Western Ag Research	3600	19.82	22.15		
Richland	Savage	1990	23.61	26.59	56.0%	88.4%



Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage 1997-2006
	Sidney	1931	22.49	25.45		
Roosevelt	Bredette	2638	19.99	22.86	46.5%	74.6%
	Culbertson	1942	20.84	23.73		
	Wolf Point	1985	24.16	27.03		
Rosebud	Birney	3160	24.57	27.29	47.7%	72.7%
	Brandenberg	2770	23.83	26.52		
	Colstrip	3218	23.32	26.10		
	Forsythe	2520	25.17	28.04		
	Ingomar	2780	23.18	25.83		
	Rock Springs	3020	21.35	23.93		
Sanders	Heron	2240	14.82	17.73	58.8%	62.8%
	Thompson Falls Power	2380	22.49	25.36		
	Trout Cr Ranger Station	2356	16.60	19.40		
Sheridan	Medicine Lake	1975	21.64	24.49	44.8%	80.7%
	Plentywood	2063	20.64	23.48		
	Raymond Border Station	2384	19.13	22.04		
	Redstone	2300	17.86	20.58		
	Westby	2120	18.10	21.033		
Silverbow	Butte FAA AP	5545	14.73	17.06	68.8%	93.6%
	Divide	5350	15.25	17.58		
Stillwater	Columbus	3602	22.31	25.09	46.5%	72.5%
	Mystic Lake	6544	13.57	16.57		
	Nye	4840	15.00	17.93		
	Rapelje	4125	20.35	23.07		
Sweet Grass	Big Timber	4100	20.60	23.47	44.7%	49.4%
	Melville	5370	12.83	15.49		
Teton	Blackleaf	4240	14.74	17.34	68.8%	88.4%
	Choteau Airport	3845	20.53	23.07		
	Fairfield	3980	19.10	21.76		
	Gibson Dam	4724	13.57	16.22		
Toole	Goldbutte	3498	16.30	18.96	51.8%	70.8%
	Sunburst	3610	18.74	21.46		

Column A	Column B	Column C	Column D	Column E	Column F	Column G
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973	Management Factor Percentage 1997-2006
	Sweetgrass	3466	18.22	21.22		
Treasure	Hysham	2660	25.01	27.78	53.4%	91.5%
Valley	Glasgow WSO AP	2293	23.48	26.12	57.9%	74.9%
	Hinsdale	2670	22.18	25.25		
	Opheim 10	2878	16.19	18.86		
	Opheim 16	3258	16.73	19.34		
Wheatland	Harlowton	4162	17.83	20.56	46.6%	54.4%
	Judith Gap	4573	13.77	16.40		
Wibaux	Carlyle	3030	19.87	22.75	See appropriate adjacent county	
	Wibaux	2696	18.69	21.50		
Yellowstone	Billings Water Plant	3097	26.16	28.92	59.5%	77.8%
	Billings WSO	3648	25.49	28.22		
	Huntley Exp Station	3034	21.92	24.61		

**36.12.1903 CHANGE APPLICATION - ADVERSE EFFECT**

(1) Lack of Adverse effect for change applications is generally based on the applicant's plan showing the diversion and use of water and operation of the proposed project will not exceed historic use, and can be implemented and properly regulated. A written narrative must be provided addressing the applicant's plan to prevent potential adverse effects to existing water rights, certificates, permits, and water reservations.

(2) remains as proposed.

4. The following comments were received and appear with the department's responses. The department noted that a number of comments received both as written comments and through oral testimony at hearing were not specifically aimed at a particular rule change. Those comments are addressed below under "General Comments and Responses", prior to the specific comments and responses.

**GENERAL COMMENTS AND RESPONSES:**

**GENERAL COMMENT 1:**

Concern was expressed to the effect that DNRC does not have the resources to take on a larger role in the analysis and processing of applications. Commenters also noted the need for ongoing communication throughout the process of applying for, processing, and analyzing applications for permits and changes.

GENERAL RESPONSE 1:

DNRC recognizes the larger role that it will have in the process and has evaluated the amount of time and effort it will take staff to make the new process successful. DNRC believes that the current staffing structure will be adequate to accomplish this new role and will make any internal adjustments in resources as needed. Certain elements of application review may be less time intensive where DNRC performs the analysis than where the applicant provides analysis which must then be deciphered and reviewed by DNRC. DNRC will also be conducting training for staff in implementing the new process and is planning to provide training and guidance documents to external entities as needed. DNRC agrees with the comments that the new process will likely increase the amount of communication that takes place between DNRC and applicants both prior to the actual filing of the application and through processing and analysis. DNRC believes that this increased communication will result in better applications at the initial filing stage, a better understanding of the proposal throughout the process, and a faster review time. House Bill 40 (2009) statutorily facilitated DNRC communication with applicants to better understand their applications. DNRC believes that this communication will be enhanced under the reforms.

GENERAL COMMENT 2:

Concern was raised that having DNRC conduct the analysis of the application may result in a potential conflict of interest between DNRC, the applicant, and/or an objector. Some commenters are also concerned that DNRC will be preparing an application or design an applicant's project.

GENERAL RESPONSE 2:

DNRC fails to see how a conflict of interest could develop under the new process any more than under the existing process. Under the existing process DNRC uses its own expertise in evaluating the analysis provided by the applicant and either believes applicant's analysis to be adequate or not. Under the new process, DNRC utilizes the information provided by the applicant to run the same sorts of analysis it currently performs to evaluate the applicant's analysis. The new process will simply eliminate the need for the applicant to conduct an analysis that duplicates the analysis DNRC already conducts for each application. Additionally, under the new process applicants will receive DNRC technical analysis earlier in the process than they do under the current process and will have the opportunity to provide DNRC with additional information and/or analysis to consider when making its determination on the application. Applications will continue to be processed through regional offices which have knowledge of the local area.

DNRC does not prepare applications or design an applicant's project. The applicant must still have a plan as to the proposed use of the water; this requirement has not

changed. DNRC will be preparing analysis on the data and information submitted by applicant, as it does presently.

To say that DNRC becomes an "advocate" of the applicant under the new process is not correct. Under both the existing and the new process DNRC is making a decision based on the applicable criteria and its analysis of the information submitted by the applicant as to whether an application can be granted. Under both processes, a potential objector is left in the same situation: DNRC has made a decision based on the criteria and its analysis as to whether an application can be granted. If a contested case hearing is held then both the applicant and the objector must provide evidence of why DNRC's decision should be upheld or overruled. Under both processes, DNRC experts can be examined by the parties under oath. No conflict of interest is implicated under either process. DNRC is an objective reviewer with no stake in the outcome of an application either way.

There is no requirement that the applicant perform the analyses discussed in the reforms or submit them as part of a correct and complete application. This should save the average applicant time and resources. Commenters are correct in that less information will be required for an application to be correct and complete. DNRC has reviewed what information it believes it will need to make a determination of whether the requisite criteria are proven and is only requesting that information. Should DNRC find that it needs additional information from the applicant after the correct and complete stage, it will contact the applicant. This is the advantage of the process facilitated by HB 40.

COMMENT 1:

The definition for ARM 36.12.101(51) should clarify that the pre-application review meeting can take place in person, teleconference, or video conference.

RESPONSE 1:

DNRC agrees and has amended the definition accordingly.

COMMENT 2:

Commenter said that DNRC is proposing to replace the applicant's notarized signature with an "Affidavit & Certification", and that change does not appear in the proposed rule.

RESPONSE 2:

DNRC inadvertently struck all of ARM 36.12.1301(2)(g). (2)(g) has been amended to read "the applicant's signature".

COMMENT 3:

Commenter stated in reference to ARM 36.12.1702(4)(b) that there are many reasons why it is impossible to take measurements every month. The proposed rule should read as follows: "If it is not possible to take measurements every month due to physical conditions at the measuring site".

RESPONSE 3:

DNRC recognizes that there are other reasons it may not be possible to take measurements every month due to conditions other than high spring flows. (4)(b) has been amended to read: "If it is not possible to take measurements every month due to high spring flow conditions or other limiting conditions approved by the department, at least one measurement must be collected during the lowest flow period."

COMMENT 4:

Commenter was concerned that use of "depleted" without a definition of that term in ARM 36.12.1704(2)(a) and 36.12.1705(2) could result in misinterpretation to mean the dictionary definition of "to lessen markedly", when the term is used in the vernacular of water use to mean any reduction in stream flow.

RESPONSE 4:

DNRC agrees. Those subsections have been amended to replace "that could be depleted" with "in which water flow could be reduced by any amount".

COMMENT 5:

Commenter was concerned that the removal of ARM 36.12.1706(5) would result in no technical evaluation of potential adverse effect (calculation of resulting water column in neighboring wells). Commenter suggested that (5) read: "For groundwater applications, in addition to (1), (2), and (3), the department shall describe how water levels in wells of prior water rights will be lowered and the rate, timing, and location of any depletions from hydraulically connected surface waters."

RESPONSE 5:

DNRC generally agrees and has amended ARM 36.12.1706(5) to read: "For groundwater applications the department will evaluate how water levels in wells of prior water rights could be lowered and the rate, timing, and location where water flow could be reduced by any amount from hydraulically connected surface waters."

COMMENT 6:

Commenter was concerned about how to use the new "Column G" in Table 1 under ARM 36.12.1902, the determination of historic use. Also there is what appears to be a reference to a footnote in Column G in the Powell County row, but no footnote appears.

RESPONSE 6:

DNRC agrees that some explanation of the use of Column G would be useful. However, it was determined there was an error in the calculations for the proposed Column G in Table 1. Therefore, DNRC will not be adopting the figures in Column G at this time but will propose the correct figures in a future rulemaking.

COMMENT 7:

Commenter suggested that DNRC further clarify the use of the phrase "on-farm-efficiency" for the calculation of historic diverted volume in ARM 36.12.1902(10).

Commenter also asked for the source for those numbers. Commenter also suggests that DNRC cross reference in rule a PowerPoint presentation used at public meetings on the proposed changes.

RESPONSE 7:

The numbers for "on-farm-efficiency" are derived from the Montana Irrigation Guide. DNRC does not believe that a cross reference to the PowerPoint presentation is appropriate in the rule itself; however, that PowerPoint is available to DNRC personnel and applicants for guidance as suggested by the commenter.

COMMENT 8:

Concern was expressed that in ARM 36.12.1903 DNRC automatically assumes that a change will adversely affect other water users.

RESPONSE 8:

DNRC does not assume that adverse effects will result from a change authorization. In order to clarify the intent of ARM 36.12.1903, the words "lack of" are added just before "adverse effect".

COMMENT 9:

A number of comments were received regarding more flexibility in allowing multiple water rights to be changed in one application under ARM 36.12.1901, especially if they are to be used for the same project.

RESPONSE 9:

DNRC believes that it has provided as much flexibility as it can in allowing multiple water rights to be changed in one application without risking adverse effect to other water users due to combined analyses of multiple water rights. Suggesting more flexibility in allowing multiple water rights with different points of diversion or in main stem streams and tributaries would make it much more difficult to evaluate adverse effects on other water users who have points of diversion between the multiple water rights proposed to be changed.

In the past, water rights changed as a group have at times been changed later on an individual basis. It is important that DNRC be able to evaluate the effect of a change of each water right individually, acknowledging that some rights may have been historically used in combination. Joint analysis of multiple water rights in a single application can make it difficult to analyze the requisite criteria as they apply to each right. While it may be convenient for the applicant to join multiple water rights in one analysis, the analysis for each right may be impossible based on the information submitted or may take significantly longer than if individual rights are grouped as set forth in the rule. While DNRC has the discretion to require a separate application for each right, it has chosen not to do so. DNRC believes that the proposed rule best facilitates DNRC's mandate to evaluate the requisite statutory criteria and accurately described the individual water rights post change.

COMMENT 10:

The deletions to ARM 36.12.120 appear to streamline this process. However, commenter asked how, and what information DNRC will use to evaluate water use in closed basins.

RESPONSE 10:

ARM 36.12.120(5) through (7) were removed because DNRC believes those sections simply reiterate the requirements for hydrogeologic assessments pursuant to 85-2-361, MCA. Rules are to expound on or clarify statutory language, not to parrot that language. The deletions leave applicants in the same position that they would find themselves when undertaking any hydrogeologic assessment under the requirements of 85-2-361, MCA.

COMMENT 11:

There were several comments received on the draft revised application forms and addendums, provision of guidance documents, staffing of pre-application meetings, and application reviews referenced in the rules.

RESPONSE 11:

DNRC appreciates the comments and will take them into consideration.

COMMENT 12:

There were several comments about fees. One commenter stated that the fees were significantly increased for change and new permit applications. One commenter wanted a sliding scale for fees for multiple applications. Other commenters supported the fee incentive to attend pre-application review meetings.

RESPONSE 12:

The fees for the change authorization and new permit applications were not increased if the applicant attends the pre-application review meeting. The fees will only be increased if the applicant does not participate in a pre-application meeting. DNRC declines to implement a sliding scale for multiple applications at this time due to the work required for each application review. DNRC will, however, take this suggestion under advisement and future consideration.

COMMENT 13:

Commenter would like to be able to submit a mitigation change application prior to a new permit application.

RESPONSE 13:

Mitigation change applications and new permit applications are treated as a single application pursuant to 85-2-363, MCA.

COMMENT 14:

Commenter was concerned that 60 days is too short a timeframe for responding to a Draft Preliminary Decision to Deny an application. Commenter suggested a 90- or 120-day timeframe to respond and issue for a revised Draft Preliminary

Determination. The applicant should also be able to provide further information to support the application.

RESPONSE 14:

If DNRC issues a Draft Preliminary Determination to Deny, the applicant may sign a waiver of the statutory timelines and is afforded the opportunity to present further information and analysis/support. The 60 days is simply offered as a starting point as guidance for the applicant and DNRC regional office staff. If the applicant demonstrates good faith in collecting the additional information it would like to present, DNRC would consider extending this timeframe. If DNRC proceeds to issue a final Preliminary Determination to Deny, the applicant is afforded further opportunity to present additional information through a show cause hearing before DNRC. This hearing process offers the applicant the ability to present further evidence, information, analysis, and support for the application. Once in the hearing process, the hearing examiner may consider and approve continuances of the matter until the party(s) are prepared to present their case.

COMMENT 15:

Commenter asked if DNRC will attend the contested case hearing to defend the determinations regarding each criteria if a Draft Preliminary Determination to Grant is issued and objections are received.

RESPONSE 15:

DNRC staff involved in the technical review of the application will be available upon request. They will not need to be subpoenaed. Any party may subpoena any additional DNRC staff member.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

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

/s/ Anne Yates  
ANNE YATES  
Rule Reviewer

Certified to the Secretary of State on October 1, 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 ADOPTION  
Rules I through XXXIII pertaining to )  
Medicaid home and community )  
services children's autism program )

TO: All Concerned Persons

1. On July 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-593 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1489 of the 2012 Montana Administrative Register, Issue Number 14. On September 6, 2012, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Adoption at page 1731 of the 2012 Montana Administrative Register, Issue Number 17. The purpose of the amended notice was to remove the private health insurance criteria due to not being approved by the Center for Medicare and Medicaid Services.

2. The department has adopted the above-stated rules as proposed: Rule I (37.34.1901), II (37.34.1903), III (37.34.1905), IV (37.34.1907), V (37.34.1909), VI (37.34.1911), VII (37.34.1913), VIII (37.34.1915), IX (37.34.1917), X (37.34.1919), XI (37.34.1921), XII (37.34.1923), XIII (37.34.1925), XIV (37.34.1927), XV (37.34.1929), XVI (37.34.1931), XVII (37.34.1933), XVIII (37.34.1935), XIX (37.34.1937), XX (37.34.1939), XXI (37.34.1941), XXII (37.34.1943), XXIII (37.34.1945), XXIV (37.34.1947), XXV (37.34.1949), XXVI (37.34.1951), XXVII (37.34.1953), XXVIII (37.34.1955), XXIX (37.34.1957), XXX (37.34.1959), XXXI (37.34.1961), XXXII (37.34.1963), and XXXIII (37.34.1965).

3. No comments or testimony were received.

4. The department intends to apply these rules retroactively to October 1, 2012. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Cary B. Lund  
Rule Reviewer

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

Certified to the Secretary of State October 1, 2012.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.87.903 pertaining to )  
changing prior authorization )  
requirements and adopting a new )  
utilization review manual )

TO: All Concerned Persons

1. On August 9, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-597 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 1609 of the 2012 Montana Administrative Register, Issue Number 15.

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

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

COMMENT #1: One commenter asked why case management and community-based psychiatric rehabilitation services (CBPRS) does not have an "x" in the box under CON (certificate of need) on page 8 of the UR manual, since neither of these services requires a CON.

RESPONSE #1: The boxes referenced should have an "x". The department will correct this typographical error.

COMMENT #2: A commenter refers to the title Medical Necessity Criteria on pg. 1 of the UR manual and asked the department to define what is meant by Medical Necessity Criteria.

RESPONSE #2: The general definition of medical necessity or medically necessary service is defined in ARM 37.82.102(18). Medical necessity is further defined for children's mental health services using specific criteria. For children's mental health services, the terms medical necessity criteria, clinical management guidelines, and clinical guidelines mean the same thing. The medical necessity criteria are used as a guideline in determining whether or not children's mental health services are clinically indicated to treat the youth and for how long. The criteria are separated into admission and continued stay criteria; both are used as guidelines in determining whether services are medically necessary and will be reimbursed by Medicaid. The purpose of the Children's Mental Health Bureau Provider Manual and Clinical Guidelines for Utilization Management (UR manual) is to define the medical

necessity criteria for children's mental health services for Medicaid reimbursement and the process for requesting a review.

COMMENT #3: A commenter asked for clarification of the apparent disparity in the UR manual between the CON criteria for therapeutic group home (TGH) which includes: e) Lack of family and other community social networks and the medical necessity criteria (MNC) for continued stay in a TGH which includes "2. The youth and family/legal representative are engaged in treatment and making progress."

RESPONSE #3: The department appreciates the commenter's recommendations; however, the comment is outside the scope of the proposed changes to the UR manual. The department did not propose changes to the TGH CON criteria.

COMMENT #4: On pg. 28 of the UR manual, a commenter suggested that the department should consider the chronicity of symptoms and behaviors in addition to their severity, stating that the interval between episodes of severe behaviors may increase when the youth is in an intensive level of care, but the risk of the behavior returning increases when the person returns to a lower level of care.

RESPONSE #4: The department appreciates the commenter's recommendations; however, the comment is outside the scope of the proposed changes to the UR manual.

COMMENT #5: A commenter suggested adding Dialectical Behavioral Therapy (DBT) as an example of specialized outpatient therapy to be allowed concurrent with Comprehensive School and Community Treatment (CSCT), and disagreed with the statement that continuation of an existing relationship with the previous outpatient therapist does not constitute a specific clinical need. The commenter also asked what constitutes adequate documentation regarding the coordination of care between the outpatient therapist and the CSCT therapist.

RESPONSE #5: The department appreciates the commenter's recommendations; however, the comment is outside the scope of the proposed changes to the UR manual.

COMMENT #6: In section 5.8.2 of the UR manual one of the criteria for providing outpatient therapy in excess of 24 sessions is "SED diagnosis and currently global assessment of functioning (GAF)." A commenter asked if there is a limit or cut-off GAF score that is expected for support of additional sessions.

RESPONSE #6: The department appreciates the commenter's recommendations; however, the comment is outside the scope of the proposed changes to the UR manual.

COMMENT #7: A commenter asked for clarification of the continued stay criteria for therapeutic family care (TFC) in the UR manual.

RESPONSE #7: The department appreciates this question. Since TFC services will not require prior authorization after October 1, 2012, TFC providers must use the TFC admission criteria in assessing whether or not to provide TFC services to youth.

COMMENT #8: One commenter asked for a copy of the proposed October 1, 2012 UR manual and wondered if it was complete. The commenter wanted to make sure they had an opportunity to review the proposed manual changes before it became final and wanted to be reassured that the department could not modify the manual after the adoption of the rule.

RESPONSE #8: The MAR notice was published on August 9, 2012 and provided the web site address where the proposed manual was posted for review during the rulemaking process. The manual contained the revisions the department was proposing to make. The department cannot modify the manual outside of the rulemaking process as it is adopted and incorporated into the rule.

COMMENT #9: Two commenters commented on Section 4, Appeal process of the UR manual requesting language revision based upon actual practice of the Utilization Management Contractor and the Office of Fair Hearings.

RESPONSE #9: The department has made the requested language revisions to the UR manual based upon these comments. Both commenters are well versed in actual practice of the two entities mentioned above and the revisions ensure the UR manual is correct. The revisions may be viewed at our web site at: [www.dphhs.mt.gov/mentalhealth/children/](http://www.dphhs.mt.gov/mentalhealth/children/) or at [www.dphhs.mt.gov/dsd/adminrules.shtml](http://www.dphhs.mt.gov/dsd/adminrules.shtml) during the rulemaking process.

The revisions made include the following:

In 4.1, language is removed that references the ten calendar day timeframe before an initial recommendation becomes a final determination. Language had also been added to clarify that parents or legal representatives maintain their right to request a fair hearing.

In 4.2, the department added language which better describes peer-to-peer reviews and desk reviews.

COMMENT #10: One commenter asked a question, "in the clinical management guidelines under 5.8.5 who will be authorizing outpatient therapy services concurrent with TGH, the department or the UR contractor."

RESPONSE #10: The department researched this and in the new utilization review contract the UR contractor is responsible for authorizing outpatient therapy services concurrent with Therapeutic Group Home. The department has corrected this in section 5.8.5 of the UR manual.

COMMENT #11: One comment noted that there was a clerical error regarding the effective date on the cover of the UR manual.

RESPONSE #11: The department has corrected the error and the effective date on the manual now states October 1, 2012.

4. The department intends to apply these rules retroactively to October 1, 2012. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ John Koch  
Rule Reviewer

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

Certified to the Secretary of State October 1, 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<br>Subject | 1. Consult ARM Topical Index.<br>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.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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