

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 2

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New
Rules I through IX, regarding the
Movie and TV Industries and Related
Media-Tax Incentives

NOTICE OF PUBLIC HEARING ON
PROPOSED ADOPTION

TO: All Concerned Persons

1. On February 21, 2013, at 1:00 p.m., the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building at 301 South Park Avenue, at Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Commerce no later than 5:00 p.m., February 15, 2013, to advise us of the nature of the accommodation that you need. Please contact Bonnie Martello, Department of Commerce, 301 South Park Avenue, P.O. Box 200501, Helena, Montana 59620-0501; telephone (406) 841-2596; fax (406) 841-2701; TDD 841-2702; or e-mail bmartello@mt.gov.

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

NEW RULE I INTRODUCTION (1) A production company may not receive the tax credits allowed under 15-31-907 and 15-31-908, MCA unless the production has been certified by the Department of Commerce and has applied to the Department of Revenue for the tax credits as provided in 15-31-906, MCA.

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

NEW RULE II DEFINITIONS As used in these rules, the following words and phrases have the following meanings:

(1) "Department" means the Department of Commerce.

(2) "Production" means a nationally or regionally distributed feature-length film, short film, documentary, television series or segment, television pilot, magazine advertising, other than advertising for tobacco products, or commercial made in Montana, in whole or in part, for theatrical, television, video, internet, or other viewing. The term does not include the production of television coverage of news and athletic events or a film, video, internet production, television series, magazine advertising, or commercial that:

(a) contains any obscene material or performance as described in 45-8-201(2), MCA; or

(b) is produced in whole or in part with money received for tobacco product placement, advertisement, or other tobacco use in the production.

(3) "Production company" means a company engaged in the business of producing nationally or regionally distributed productions.

(a) The term does not include a company owned, affiliated, or controlled by, in whole or in part, a company or person that is in default on a loan made by this state or a loan guaranteed by this state or a company or person that has filed for bankruptcy.

(4) "State-certified production" means a production certified by the department as provided in 15-31-904, MCA and produced by a production company that has a national or regional distribution plan, including but not limited to a major theatrical exhibition, film festival, television network, cable television programming, magazine advertising, or video or internet distribution.

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

NEW RULE III APPLICATION (1) The department shall provide a precertification application to a production company seeking state certification of a production.

(2) The application must include, but is not limited to:

(a) the production company's name, primary home address, business address, telephone and fax numbers, incorporation information, and federal tax identification number;

(b) the address and telephone and fax numbers of the production company's Montana office;

(c) the name of the line producer, unit production manager, or production accountant, or the names of all three;

(d) a statement that the production company meets the definition of a production company under 15-31-903, MCA;

(e) the title of the production;

(f) the type of production;

(g) the proposed dates of production from preproduction to the start and completion of principal photography;

(h) a copy or synopsis of the production script;

(i) a list of the production locations;

(j) a statement that the proposed production does not contain any material or performance that would be considered obscene under 45-8-201(2), MCA or will not receive any money for tobacco product placement, advertisement, or other tobacco use in the production; and

(k) if the production is a feature-length film, a statement that the production will include a line in the production's film credits that the production was filmed in Montana.

(3) The application must be completed and signed by a manager, agent, president, vice president, or other person authorized to represent the production company.

(4) The application must be submitted to the department before the start of principal photography.

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

NEW RULE IV FEATURE-LENGTH FILM (1) If the production is a feature-length film, the production company and the department, prior to the issuance of a certification number, shall enter into an agreement that the production company will comply with the provisions of [NEW RULE III]. The agreement may provide for remedies if the production company violates the agreement.

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

NEW RULE V CERTIFICATION (1) The department shall approve an application that complies with the requirements of [NEW RULES III and IV]. Approval qualifies the production as a state-certified production.

(2) The department shall deny an application that fails to comply with the requirements of [NEW RULES III and IV].

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

NEW RULE VI NOTIFICATION (1) The department shall notify the production company in writing within 30 days of receiving the application whether the application is approved or denied.

(2) If the application is approved, the department shall include in the written notification a certification number. The department shall provide a copy of the notice to the Department of Revenue.

(3) If the application is denied, the department shall provide the production company with written notification explaining the denial.

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

NEW RULE VII REVIEW (1) A production company may request a review of a denied application.

(2) The request must be in writing and filed with the department within 30 days from the date of denial.

(3) The request must explicitly state the production company is requesting a review and explain the reason the application should be approved.

(4) A review panel comprised of three film office staff members shall review the request and determine whether the application was properly denied.

(5) If the panel determines the application was properly denied, the department shall confirm the denial.

(6) If the panel determines the application was improperly denied, the department shall approve the application.

(7) The department shall notify the production company of the panel's determination in writing within 14 days of receiving the request.

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

NEW RULE VIII REVOCATION (1) If the department determines that the production company has violated the provisions of [NEW RULE III] the department may revoke certification.

(2) If the department revokes certification, the department shall promptly notify the Department of Revenue.

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

NEW RULE IX CONTESTED CASE (1) The revocation of certification may be contested in the manner prescribed in ARM 1.3.211 through 1.3.233.

(2) In a contested case before the department, the burden of proof shall be on the production company to establish by clear and convincing evidence that certification should not have been revoked.

AUTH: 15-31-904, MCA

IMP: 15-31-904, MCA

REASON: The proposed administrative rules are designed to bring the Department of Commerce into compliance with the legislative mandates of 15-31-904, MCA. In addition, the proposed rules are designed to establish formal policies and procedures, ensuring the legislative intent behind 15-31-904, MCA is applied consistently and objectively.

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: Bonnie Martello, Paralegal, Montana Department of Commerce, P.O. Box 200501, Helena, MT 59620-0501; telephone (406) 841-22596; fax (406) 841-2701; or e-mail bmartello@mt.gov, and must be received no later than 5:00 p.m., February 28, 2013.

5. Garrett R. Norcott, Attorney, Montana Department of Commerce, has been designated to preside over and conduct this hearing.

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

a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled.

/s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE
Rule Reviewer

/s/ MEG O'LEARY
MEG O'LEARY
Director
Department of Commerce

Certified to the Secretary of State January 22, 2013.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 10.64.301 relating to school bus) PROPOSED AMENDMENT
requirements)

TO: All Concerned Persons

1. On February 28, 2013 at 9:00 a.m. the Board of Public Education will hold a public hearing in the Superintendent's conference room at 1227 11th Avenue, Helena Montana, to consider the proposed amendment of the above-stated rule.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on February 21, 2013, to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

10.64.301 SCHOOL BUS REQUIREMENTS (1) The Board of Public Education adopts and incorporates ~~herein~~ the Standards for School Buses in Montana – ~~2002~~ 2012. A copy of this document is available ~~from the Board of Public Education, P.O. Box 200601, Helena, Montana 59620-0601~~ or from the Office of Public Instruction, Pupil Transportation Division, P.O. Box 202501, Helena, Montana 59620-2501 and is available at the following web address: <http://www.opi.mt.gov/pdf/PupilTransport/12ProposedBusStandards.pdf>.

(2) The Board of Public Education adopts standards for school buses in Montana in part from the ~~2000~~ National School Transportation Specifications and Procedures, as recommended adopted in 2010 by the ~~Fifteenth~~ National conference ~~Congress~~ on ~~s~~School ~~t~~Transportation (NCST). The ~~interpretation committee of the NCST~~ occasionally issues an interpretation on ~~one or more of its recommended-adopted~~ specifications and procedures. Any interpretation ~~made~~ adopted by the NCST ~~interpretations committee~~ shall be the official interpretation of the corresponding Montana standards unless that interpretation is specifically redefined or preempted by a corresponding Montana standard, law, or regulation. The National School Transportation Specifications and Procedures and additional information regarding the NCST are available at www.NCSTOnline.org.

AUTH: 20-2-121, MCA
IMP: 20-10-111, MCA

4. REASON: The Board of Public Education must prescribe minimum standards consistent with the recommendations adopted by the National Congress (previously "conference") on School Transportation (NCST). The NCST has revised and adopted specifications and procedures for school buses. It is necessary for the BPE to amend ARM 10.64.301 to update the Standards for School Buses in Montana to be consistent with the 2010 National School Transportation Specifications and Procedures. The Montana Pupil Transportation Advisory Council and OPI staff conducted a comprehensive review of the 2002 Standards for School Buses in Montana. The revised version, Standards for School Buses in Montana - 2012, also needs to be incorporated into the rules.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov and must be received no later than 5:00 p.m. February 28, 2013.

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

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

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

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

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

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

Certified to the Secretary of State January 22, 2013.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULES I through IX relating to adult) PROPOSED ADOPTION AND
education and the repeal of ARM) REPEAL
10.66.101 through 10.66.109 relating)
to high school level tests of general)
education development (GED))

TO: All Concerned Persons

1. On February 28, 2013 at 9:30 a.m., the Board of Public Education will hold a public hearing in the Superintendent's conference room at 1227 11th Avenue, Helena Montana, to consider the proposed adoption and repeal of the above-stated rules.

2. The Board of Public Education will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m. on February 21, 2013 to advise us of the nature of the accommodation that you need. Please contact Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov.

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

NEW RULE I DEFINITIONS (1) For the purposes of this chapter, the following terms apply:

(a) "Alternative educational options" means a state-approved educational program designed to provide a secondary education outside a traditional high school setting (e.g., Job Corps, Youth Challenge).

(b) "Candidate" means a person applying to take a high school equivalency (HSE) test.

(c) "Chief education officer" means the principal or designated school official (e.g., guidance counselor).

(d) "High school equivalency diploma" means a diploma issued by the state to individuals passing a state-approved high school equivalency test.

(e) "High school equivalency test" means a test designed for individuals without a high school diploma to demonstrate the competencies of a high school graduate.

(f) "Regular school program" means an education program provided by a public, private, or home school for which credits towards graduation are earned.

(g) "School" means an education program provided by a public, private, or home school.

(h) "State HSE test administrator" means the person in the Office of Public

Instruction (OPI) who administers the HSE program.

AUTH: 20-2-114, 20-2-121, MCA

IMP: 20-2-131, MCA

NEW RULE II QUALIFICATIONS FOR CANDIDATE TO RECEIVE HIGH SCHOOL EQUIVALENCY DIPLOMAS (1) Candidates shall not be currently enrolled in school or have received an accredited high school diploma or high school equivalency credential.

(2) Candidates shall receive a high school equivalency (HSE) diploma when scores meet or exceed the minimum score requirement established by the Board of Public Education.

(3) Candidates must physically reside in Montana and have a Montana mailing address, or claim Montana as their state of residence if tested at a military installation or in a federal correctional institution.

(4) Candidates must be at least 19 years of age.

AUTH: 20-2-114, 20-2-121, MCA

IMP: 20-2-131, MCA

NEW RULE III QUALIFICATIONS – EXCEPTIONS (1) Candidates 17 and 18 years of age are eligible to test and receive HSE diplomas provided the candidate:

(a) submits to the HSE testing center prior to testing, an original, official school document that clearly identifies the candidate by name, date of birth, and provides the last school enrollment date and signed by the chief education officer verifying that the candidate has been advised of in-school and alternative educational options; or

(b) resides in a Montana-based job corps center, correctional facility, state-authorized group home, or treatment center and submits a written referral from the facility director or authorized agent (e.g., probation officer); and

(c) is no longer enrolled in a regular high school program for credit.

(2) Candidates with no previous high school enrollment are required to provide documentation from a chief education officer or the county superintendent of the county in which the candidate currently resides, documenting the candidate has not enrolled in school and has been advised of in-school and alternative education options.

AUTH: 20-2-114, 20-2-121, MCA

IMP: 20-2-121, MCA

NEW RULE IV AGE REQUIREMENT – WAIVER (1) A 16-year old candidate may receive a waiver of the age requirement if documentation is submitted and approved by the state HSE test administrator ([NEW RULE II]), as follows:

(a) a completed, signed, and notarized 16-year old age waiver application form providing school status as required under [NEW RULE III] and notarized

permission from the candidate's parent or legal guardian;

(b) a statement from an OPI adult basic education program stating the candidate has successfully completed HSE preparation classes or has attained pre-test scores indicating a likelihood that the candidate will pass the official HSE test; and

(c) a letter on official letterhead stationery from an employer or continuing education training program indicating that acceptance of the candidate is based upon successful completion of the HSE test.

(2) A candidate 16 years of age who resides in a Montana-based job corps center, correctional facility, state-authorized group home, or treatment center may receive a waiver of the age requirement if the candidate submits a written referral from the facility director or authorized agent (e.g., probation officer) and is no longer enrolled in a regular high school program for credit.

(3) Candidates with no previous high school enrollment are required to provide documentation from a chief education officer or the county superintendent of the county in which the candidate currently resides, documenting the candidate has not enrolled in school and has been advised of in-school and alternative education options.

AUTH: 20-2-114, 20-2-121, MCA

IMP: 20-2-131, MCA

NEW RULE V REQUIREMENTS FOR TESTING (1) The following items must be submitted to an official HSE testing center prior to testing:

(a) picture identification issued by tribal, state, or federal authorities;

(b) appropriate documentation pursuant to [NEW RULE III] or [NEW RULE IV] if under the age of 19; and

(c) proof of Montana residency.

AUTH: 20-2-114, 20-2-121, MCA

IMP: 20-2-131, MCA

NEW RULE VI FEES (1) Upon advice and consent of the Board of Public Education, the Superintendent of Public Instruction shall establish a schedule of fees that may be charged for the administration of the HSE test. The schedule of fees shall be commensurate with the testing program centers' actual costs related to the HSE test. The Superintendent of Public Instruction shall report annually to the Board of Public Education the status of all fees associated with the HSE test.

AUTH: 20-2-114, 20-2-121, MCA

IMP: 20-2-131, MCA

NEW RULE VII RETESTING (1) Retests must be administered in a test form not previously taken by the examinee and in compliance with the testing service requirements.

(2) Candidates who previously received a Montana high school equivalency credential may retest if higher scores are required for employment or admission to a

postsecondary institution. Retesting for this purpose requires prior approval from the state HSE administrator in the Office of Public Instruction. Candidates shall show proof that retesting is necessary by presenting a written request on official letterhead stationery signed by the agent requiring higher scores, stating the reason the higher scores are necessary.

AUTH: 20-2-114, 20-2-121, MCA
IMP: 20-2-131, MCA

NEW RULE VIII ISSUANCE OF EQUIVALENCY DIPLOMAS AND OFFICIAL TRANSCRIPTS (1) All HSE diplomas are issued by the Superintendent of Public Instruction. Official transcripts and diplomas will be awarded to those who successfully complete the HSE test. Candidates will have access to test results through an official database. The Office of Public Instruction will maintain HSE records permanently. HSE records may be obtained by contacting the state HSE administrator at the Office of Public Instruction, P.O. Box 202501, Helena, Montana 59620-2501.

(2) HSE test transcripts are accepted as official only when reported to the state HSE administrator by official HSE testing centers or by a scoring service recognized by the HSE administrator.

AUTH: 20-2-114, 20-2-121, MCA
IMP: 20-7-131, MCA

NEW RULE IX OFFICIAL HSE TEST CENTERS (1) Official HSE test centers may be established as needed with the approval and inspection by the state HSE administrator.

(2) Each Montana HSE test center must meet the requirements, policies, and procedures as proscribed by their individual testing company.

(3) Following approval by the state HSE administrator, the HSE test center's contact information will be posted on the Office of Public Instruction HSE web site.

AUTH: 20-2-114, 20-2-121, MCA
IMP: 20-2-131, MCA

4. The board proposes to repeal the following rules:

10.66.101 REQUIREMENTS WHICH MUST BE MET IN ORDER TO RECEIVE HIGH SCHOOL EQUIVALENCY DIPLOMAS

AUTH: 20-2-114, 20-2-121, MCA
IMP: 20-2-121, 20-4-120, MCA

10.66.102 WAIVER OF AGE REQUIREMENT

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.66.103 METHOD OF APPLYING

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.66.104 FEES

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.66.105 WAITING PERIOD FOR RETESTING

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.66.106 ISSUANCE OF EQUIVALENCY DIPLOMAS

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.66.107 OFFICIAL TRANSCRIPTS

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.66.108 OFFICIAL GED TEST CENTERS

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

10.66.109 DEFINITIONS

AUTH: 20-2-114, MCA
IMP: 20-2-121, MCA

5. REASON: The GED Testing Service has partnered with Pearson Vue. Through this partnership GED has transitioned to a for-profit company and plans for significant changes to GED testing. Of greatest concern to the Montana task force, and stakeholders across the country, is the substantial increase in test taker fees. There is currently much discussion at the national level to develop alternative high school equivalency tests. The proposed rule changes will allow the Board of Public Education the flexibility to adopt other tests when and if they are developed, and maintain the quality control that is necessary to ensure the integrity and validity of our adult high school equivalency diploma. 20-7-131, MCA. Additionally, the new language replaces out-dated terminology and references, clarifies age-based exceptions, and aligns rule with practice.

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: Peter Donovan, Executive Secretary, 46 North Last Chance Gulch, P.O. Box 200601, Helena, Montana, 59620-0601; telephone (406) 444-0302; fax (406) 444-0847; or e-mail pdonovan@mt.gov and must be received no later than 5:00 p.m., February 28, 2013.

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

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

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/ Peter Donovan
Peter Donovan
Rule Reviewer

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

Certified to the Secretary of State January 22, 2013.

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 EXTENSION OF
17.30.702, 17.36.345, 17.36.914, and)	COMMENT PERIOD ON
17.38.101 pertaining to Department)	PROPOSED AMENDMENT
Circular DEQ-4)	
)	(WATER QUALITY)
)	(SUBDIVISIONS/ON-SITE
)	SUBSURFACE WASTEWATER
)	TREATMENT)
)	(PUBLIC WATER AND SEWAGE
)	SYSTEMS REQUIREMENTS)

TO: All Concerned Persons

1. On December 20, 2012, the Board of Environmental Review and the Department of Environmental Quality published MAR Notice No. 17-343 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2529, 2012 Montana Administrative Register, issue number 24.

2. A comment was received requesting that the board and the department extend the comment period because the original comment period spanned the Christmas and New Year holidays. The board and department are therefore extending the comment period to allow the public more time to provide comment.

3. Written data, views, or arguments may 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, no later than February 8, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The board and department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action 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., February 5, 2013, 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.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

/s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.

Chairman

DEPARTMENT OF ENVIRONMENTAL
QUALITY

BY: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, Director

Certified to the Secretary of State, January 22, 2013.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.85.103, 17.85.105, 17.85.106,)
17.85.110, 17.85.111, 17.85.112,)
17.85.113, 17.85.114, 17.85.115)
pertaining to definitions, eligible projects,))
eligible applicants, application)
procedure, application evaluation)
procedure, environmental review and)
compliance with applicable state law,)
applications and results public, loan)
terms and conditions and reports and)
accounting)

NOTICE OF PROPOSED
AMENDMENT

(ALTERNATIVE ENERGY
REVOLVING LOAN PROGRAM)

(NO PUBLIC HEARING
CONTEMPLATED)

TO: All Concerned Persons

1. On March 4, 2013, the Department of Environmental Quality proposes to amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking 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., February 19, 2013, 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 rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.85.103 DEFINITIONS Unless the context requires otherwise, as used in this subchapter:

(1) through (3) remain the same.

(4) "Capital investments for energy conservation purposes when done in conjunction with an alternative energy system" means a capital investment that is used for an energy conservation purpose that is in the same structure as, and is constructed, installed, or otherwise put in service as part of, or at about the same time as, an alternative energy system to reduce the size of energy system needed.

(5) and (6) remain the same.

(7) "Geothermal system" means a system that transfers energy either from the ground, by way of a closed loop, or from ground water, by way of an open loop, for the purpose of heating or cooling a ~~residential building or small business~~ for a commercial or industrial process.

(8) "Low emission wood or biomass combustion device" ~~has the same meaning as~~ is a device that meets the standards:

(a) in 15-32-102, MCA; or
(b) adopted by a local air pollution control program established under 75-2-301, MCA.

(9) through (12) remain the same.

(13) "Residence" means any single- or multi-family, primary, or secondary dwelling place.

(14) "Return on investment" is a calculated simple payback for a system based on the installed cost of components, the current value of energy produced when the system goes into service, and the estimated useful life of the equipment.

~~(13)~~ (15) "Small business" means one that:

(a) is independently owned and operated and that is;

(b) is not dominant in its field of operation; and

(c) employs 100 or fewer individuals.

AUTH: 75-25-102, MCA

IMP: 75-25-102, MCA

REASON: The department proposes to add definitions of terms listed in 75-25-102(1), MCA, and to clarify existing definitions. In (4), the program proposes to allow energy conservation measures that will decrease the size of the proposed renewable energy system. For instance, in the case of a solar electric system, it makes sense to replace an older appliance that uses more electricity with a newer, more efficient appliance. The department proposes to amend (7) to allow the program to lend money for geothermal systems in any type of building or for a commercial or industrial process. Eligible applicants in 75-25-101, MCA, include individuals, small businesses, units of local government, units of the university system, and nonprofit organizations. The current rule limits the eligible geothermal systems to residences or small businesses. Therefore, the department proposes to allow funding of a project in any kind of building, as long as the applicant is eligible. The reason for the proposed amendment to allow funding of geothermal systems for commercial or industrial processes is that geothermal systems may be used to provide heating or cooling of processes such as the water used in a car wash or laundromat to wash cars or clothes. These are legitimate uses of geothermal energy that can accomplish the purposes of the loan program and should be eligible for funding. Under (8), a biomass system could be financed if it meets local air pollution control program guidelines. This amendment is proposed to maximize use of the fund. A definition of "residence" is proposed to be added in (13) to satisfy the requirement in 75-25-102, MCA, that it be defined. The proposed definition is taken from Webster's Dictionary and has been modified to pertain to the program. The proposed definition of "return on investment" in (14) refers to the factors used to evaluate whether or not a proposed system meets the program's intent to finance systems that make sense for Montana's climate and resources. The program does not intend to apply a specific rate of return (on investment) to determine project eligibility, as the program is designed to assist viable emerging technologies to penetrate the market. The definition of "small business" in (15) is proposed to be amended to add a criterion that the business employs fewer than 100 individuals. The term "small" requires a size limitation. The size of 100 employees was chosen

to be consistent with other DEQ programs, specifically the definition of small business in 75-2-103, MCA.

17.85.105 ELIGIBLE PROJECTS (1) The department shall fund alternative energy projects and capital investments for energy conservation purposes when done in conjunction with an alternative energy system that the department determines will best ~~enable the state to meet the legislative mandate to reduce reliance on nonrenewable~~ promote the use of alternative energy sources and distributed generation, as set forth in the state's Energy Policy Act (90-4-1001, MCA).

(2) To be eligible for funding, a project ~~or portion of a project~~ must be:

(a) ~~conducted~~ located within Montana;

(b) technically appropriate for Montana's climate ~~and available generation resources~~; and

(c) the construction or installation of an alternative energy system that generates energy through a proven methodology for the sole use of the customer-generator or for net metering, or for capital investments for energy conservation purposes when done in conjunction with an alternative energy system in a structure owned or leased by an entity listed in Title 75, chapter 25, part 1, MCA, as an eligible recipient of a loan.

(3) remains the same.

(4) An applicant must own or lease the real property where a project is proposed. For leased property, the applicant must submit the owner's permission for the project with the application. If the department determines that a lien on the real property is required, the department may not issue the loan unless each legal owner of the property signs the security agreement.

AUTH: 75-25-102, MCA

IMP: 75-25-102, MCA

REASON: The proposed amendment to (1) serves to further clarify the types of projects that will be financed and removes the "legislative intent" language that could not be documented and replaced it with language taken from the state's Energy Policy Act. The proposed amendment to (2) provides that the project must be located within the state; the term "conducted" does not accurately describe the type of projects installed through the program, and the program intends to finance only projects physically located within the state. The stricken language in (2)(b) was originally intended to allow the department to reject a project it considered not to be technically appropriate for the type of resource expected to be present in Montana. This language is vague and has not proved to be a consideration in evaluating loan applications approved to this point. The proposed amendment to (2)(c) would add language allowing a project in a structure leased by an applicant to be eligible for a loan. This would make the list of eligible projects consistent with (4), which is proposed to be amended to allow a lessee to be an eligible applicant. The proposed amendment to (4) concerning ownership and security would allow loans to be financed for projects that are approved by the property owner, who may or may not be the loan applicant, in keeping with commercial lending practices.

17.85.106 ELIGIBLE APPLICANTS (1) ~~Any person may apply, except for the following and their immediate families Unless specifically excluded in (2), the department may consider an application from a person listed in 75-25-101, MCA, for a loan to fund a project under the Act and these rules:~~

(2) The department may not consider an application for a loan from the following person, or that person's immediate family:

(a) a department employees whose duties are directly related to energy conservation or alternative energy; and

(b) a department contractors actively working on energy conservation or alternative energy projects at the time of application.

AUTH: 75-25-102, MCA

IMP: 75-25-102, MCA

REASON: The proposed amendment to (1) would implement the requirement that, to be eligible to receive a loan, an applicant must be one of the persons listed as eligible in the AERLP statute, 75-25-101, MCA: an individual, small business, unit of local government or the university system, or a nonprofit organization.

The proposed amendment to (2) would provide that contractors and department employees who are not directly or actively working with department energy programs are eligible applicants. The reason for the proposed amendment is to narrow the exclusion of eligible applicants to those who are directly or actively involved in energy conservation or alternative energy, because only these persons would have a conflict of interest or an appearance of conflict of interest.

17.85.110 APPLICATION PROCEDURE (1) remains the same.

(2) An applicant shall submit itemized costs for equipment and installation and any additional or supplemental material as requested by the department.

(3) and (4) remain the same.

AUTH: 75-25-102, MCA

IMP: 75-25-102, MCA

REASON: The proposed amendment would implement the department's intent to use itemized cost information to determine the loan amount. Use of itemized costs will allow the department to verify cost information and ensure that loans are not approved for more than the cost of the project.

17.85.111 APPLICATION EVALUATION PROCEDURE (1) ~~The department shall review each application to determine if it is complete. If the department determines that an application is not complete, the department shall inform the applicant within 30 days after the department receives the application. The department shall list the application deficiencies in writing. An applicant may resubmit after correcting all identified deficiencies for completeness and program eligibility. The department shall notify an applicant of a deficiency or ineligible project within 30 days after receiving an application and allow an applicant to correct a deficiency.~~

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

(3) The department, or a third party designated by the department, shall evaluate whether an applicant whose application met the criteria in (2) ~~is credit worthy~~ meets the financial criteria in (4). If the evaluation is performed by a third party, that party shall advise the department whether to approve or deny credit.

(4) The evaluation must be consistent with the standard practices of financial institutions and must consider for each loan requested:

(a) the type, size, risk, repayment period, and complexity of the loan requested;

(b) the financial capacity of the borrower to repay; and

(c) any other factor the department believes is necessary to meet the loss ratio required in Title 75, chapter 25, part 1, MCA.

~~(4)~~ (5) When the loan fund reaches a point where there are applications for more money than is available, the department shall prioritize applications based on the following criteria, which are not necessarily listed in the order of priority:

(a) and (b) remain the same.

(c) ~~investment/return ratio~~ the return on investment;

(d) and (e) remain the same.

(f) the ~~demographic~~ diversity of borrowers in the project portfolio; and

(g) remains the same.

~~(5)~~ (6) The department shall post the ranking of the criteria listed in ~~(4)~~ (5) on the loan program web site and refer to the web site on printed program materials when it becomes necessary to prioritize the award of available funds.

~~(6)~~ (7) If the department approves an application pursuant to these rules, the department shall indicate its decision to issue a loan by authorizing ~~a servicing agreement and the release of funds~~ loan documents.

AUTH: 75-25-102, MCA

IMP: 75-25-102, MCA

REASON: The purpose of the proposed amendments is to clarify the process the department will use to evaluate applications and to simplify the rule language and make it consistent with other rules in this subchapter. The department does not intend to use time limits or application deficiencies to halt an application's process. The department has historically worked with individual applicants to gather the information necessary to determine technical and financial eligibility and does not intend to set limits on the amount of time it will allow applicants to respond to requests for information. The amendments to (3) are proposed to clarify that the department and its contractors will use industry-standard criteria to evaluate an applicant's financial status, using past payment history and current income to determine the applicant's ability to repay a loan. This is meant to ensure that the department will not exceed the loan loss requirements set forth in 75-25-103, MCA. Further, the proposed amendment would clarify that the evaluator (either the department or a third-party financial contractor assigned to conduct the financial evaluation) would use standard financial criteria to evaluate applications. The proposed amendment to (4) would add the financial capacity of the borrower to repay to the criteria the department must consider in evaluating whether to issue a

loan. The department proposes this amendment because 75-25-102(1)(a), MCA, requires the department to adopt rules establishing eligibility criteria, including the financial capacity to repay the loans. In (5)(c), the department proposes to replace "investment/return ratio" with "the return on investment" as a tool to use in prioritizing which loan application to approve. The department proposes this amendment because "investment/return ratio" is not currently defined and the department is required by 75-25-102(1)(a), MCA, to adopt rules including eligibility criteria that include "return on investment." That phrase is defined in proposed ARM 17.85.103(14). In (5)(f), the department proposes to add "borrowers" to clarify that it is the diversity of borrowers in the loan program that will be used as a tool to prioritize which loan applications to approve. The proposed amendments to (6) reflect the current business environment that relies on web sites to bring current information quickly to the public. When the program began, the department predominantly used print media and software programs to keep web sites up-to-date were not readily available. The added language is intended to reflect current practices. In (7), the term "servicing agreement" would be replaced by the term "loan documents" to describe the loan commitment statement, promissory note, disclosure, and security agreement used to contract with the borrower for repayment. This is proposed to more accurately describe the documents that would be authorized when a loan is issued.

17.85.112 ENVIRONMENTAL REVIEW AND COMPLIANCE WITH APPLICABLE STATE LAW (1) ~~The applicant shall provide information about the project, as requested on the application form, in order to allow the department to review the proposed project for compliance with state law. Prior to executing a servicing agreement~~ issuing a loan under ARM 17.85.111, the department shall review each application to determine if a categorical exclusion from environmental review, as defined in ARM 17.4.603, applies. A categorical exclusion may apply if the requirements of (3) through (5) are met. If the department determines that a categorical exclusion does not apply, the department shall conduct a review under ARM Title 17, chapter 4, subchapter 6, to determine if the department's approval of a loan for the project loan issuance may result in significant effects to the quality of the human environment.

(2) remains the same.

(3) Except as provided in (4), the granting of a loan under this subchapter is categorically excluded from the requirement in Title 75, chapter 1, part 2, MCA, to conduct an environmental review if the loan is for any of the following projects:

(a) solar electricity/photovoltaic (solar/PV):

(i) an appropriately sized system or unit on an existing rooftop; or

(ii) a 60 kilowatt (kW) or less system installed on the ground;

(b) wind turbine - a system of 20 kilowatts (kW) or less;

(c) solar thermal - a system appropriately sized for residences or small non-residential buildings;

(d) solar thermal hot water - appropriately sized for residences or small non-residential buildings;

(e) geothermal - a closed loop ground source heat pump system, with a capacity of ten tons or less, that uses either a horizontal or vertical ground loop;

- (f) biomass thermal - a system that:
- (i) has a capacity of three million British thermal units (MMBTUs) or less per hour;
 - (ii) meets the standards set in 15-32-102, MCA; or
 - (iii) meets the standards adopted by the local air pollution control program having jurisdiction where the system is to be installed.
- (4) A categorical exclusion may not be applied to the granting of a loan for a project under (3) if:
- (a) the department has received information indicating that public controversy exists over the project's potential effects on the quality of the human environment; or
 - (b) the project might affect:
 - (i) a sensitive environmental or cultural area; or
 - (ii) an endangered or threatened species or critical habitat for that species.
- (5) The department shall document its decision to apply a categorical exclusion by referencing the application, providing a brief description of the proposed action, describing how the action meets a criterion for a categorical exclusion in (1), and documenting that the project does not fall under a criterion in (4).
- (6) The department may, to assist in planning or decision making, prepare an environmental assessment on a project that is categorically excluded under this rule.

AUTH: 75-25-102, MCA
IMP: 75-25-102, MCA

REASON: The sentence that is proposed to be stricken in (1) is redundant, based on the requirements in ARM 17.85.110 that the applicant submit an application, and in ARM 17.85.111 that the department review the applications and use the information submitted. The department intends to use the information submitted by the applicant to begin the environmental review process and will request additional information from the applicant as needed to complete the required environmental assessment.

Sections (3) through (6) are proposed to reduce the cost of administering the alternative energy program. Preparation of an environmental assessment for a project listed in (3) is unnecessary as long as the circumstances in (4) are not present, because the project will not have a significant environmental impact. The department has made this determination through preparation of a programmatic environmental assessment. See paragraph 4 below.

17.85.113 APPLICATIONS AND RESULTS PUBLIC (1) Applications and ~~reports~~ information submitted to the department pursuant to this subchapter may be made public, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. The department may publish lists of projects, including applicant names, locations, technologies, and amounts loaned. The department shall keep personal information needed for financial evaluation in a secure location.

AUTH: 75-25-102, MCA

IMP: 75-25-102, MCA

REASON: This proposed amendment is intended to make applicants and the public aware that information about loans may be made available to the general public and to detail the information that may be posted on web sites. The department will follow state and federal laws governing the release of information and the protection of sensitive personal information. The department intends for the program to be transparent to the public.

17.85.114 LOAN TERMS AND CONDITIONS (1) and (2) remain the same.

(3) The department may not issue a loan unless the applicant financially ~~qualifies as credit-worthy based on the evaluation in ARM 17.85.111(3)~~ department or its contractor determines that the borrower has the capacity to repay the loan.

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

AUTH: 75-25-102, MCA

IMP: 75-25-102, MCA

REASON: The proposed amendment of (3) would strike the term "credit worthy" and substitute a statement that the department or its contractor will not issue a loan unless the applicant's financial status indicates the loan is likely to be repaid. This proposed amendment is necessary because the department believes that the term "credit worthy" is unclear.

17.85.115 REPORTS AND ACCOUNTING (1) remains the same.

(2) Upon completion of construction or installation, a loan recipients shall provide the department with an accounting of loan expenditures documentation that the project was installed as indicated in the loan application. Documentation must include a photograph of the completed installation and any additional information requested by the department.

(3) ~~Loan recipients shall submit annual reports to the department during the term of their loan on a form provided by the department. Reports must estimate the amount of energy produced by the installed system during the year, provide information about system and component reliability, and provide all financial information required by the department's financial contractor. The department may conduct site visits to verify installations and the loan recipient shall allow the department access at reasonable times for this purpose.~~

(4) remains the same.

AUTH: 75-25-102, MCA

IMP: 75-25-102, MCA

REASON: The proposed amendment to (2) would require a loan recipient to document that the project was installed as proposed in order to ensure that the loan has been used for the purposes for which it was granted. Existing (3) was intended to collect energy production information from borrowers to meet statutory requirements. The information collected was incomplete and not technically

accurate, so the department now uses standard engineering practices to calculate energy production based on installed system capacity, equipment specifications, and climate data. As a result, the department proposes to amend (3) to eliminate the collection of incomplete and inaccurate information. Energy information is included in the annual outcomes report required in 75-25-103, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to 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, no later than February 28, 2013. To be guaranteed consideration, mailed comments must be postmarked on or before that date. In addition, the department has prepared an environmental assessment demonstrating that the projects to be categorically excluded under proposed ARM 17.85.112(3) and (4) have negligible environmental impact. That environmental assessment may be viewed on the department's web site at www.energizemontana.com. An electronic or hard copy of that document may also be obtained from Elois Johnson at the addresses listed above. Oral or written comments on the environmental assessment may also be submitted in the same manner as for the proposed rule amendments.

5. 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 they have to 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, no later than February 28, 2013.

6. If the department receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons who are 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 persons directly affected has been determined to be ten based on the 91 members of the Montana Renewable Energy Association.

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 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 supplies; 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 (406) 444-4386; e-mailed to ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH
Rule Reviewer

BY: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, Director

Certified to the Secretary of State, January 22, 2013.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF ADDITIONAL PUBLIC
ARM 24.11.204, 24.11.452A,) HEARING AND EXTENSION OF
24.11.454A, 24.11.455, 24.11 457,) COMMENT PERIOD ON
24.11.475 and 24.11.485, and the) PROPOSED AMENDMENT AND
adoption of New Rule I, pertaining to) ADOPTION
unemployment insurance)

TO: All Concerned Persons

1. On December 20, 2012, the Department of Labor and Industry (department) published at 2012 Montana Administrative Register issue 24, page 2534, MAR Notice 24-11-270, concerning the public hearing to be held on January 18, 2013, at 1:00 p.m., to consider the proposed amendment and adoption of the above-stated rules.

2. The department has determined there is good cause to hold a second public hearing and to extend the comment period for five weeks in order to provide all interested persons an opportunity to review and comment on the proposed amendment and adoption of rules pertaining to unemployment insurance. The second public hearing to consider the proposed amendment and adoption of the above-stated rules will be held on February 21, 2013, at 1:00 p.m. in the Sanders Auditorium of the DPHHS Building, 111 North Sanders St., Helena, Montana.

3. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on February 15, 2013, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Department of Labor and Industry, Attn: Don Gilbert, P.O. Box 8020, Helena, MT 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-5549; or e-mail dgilbert@mt.gov.

4. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Don Gilbert, Unemployment Insurance Division, Department of Labor and Industry, P.O. Box 8020, Helena, Montana 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-5549; or e-mail at dgilbert@mt.gov and must be received no later than 5:00 p.m., February 27, 2013.

5. An electronic copy of this Notice of Additional Public Hearing, as well as the original Notice of Public Hearing, is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. The department strives to make the electronic copy of all Notices of Public Hearings conform to the official version of the

notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockett Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

7. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

/s/ Pam Bucy
Pam Bucy
Commissioner
Department of Labor and Industry

Certified to the Secretary of State January 22, 2013.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.4.201, 32.4.301, 32.4.601,	)	AMENDMENT
32.4.701, 32.4.1301, 32.4.1302,)	
32.4.1303, 32.4.1309 pertaining to	)	NO PUBLIC HEARING
identification of, inspection of,	)	CONTEMPLATED
importation of alternative livestock,)	
transport within and into Montana,)	
definitions, requirements for)	
mandatory surveillance of Montana)	
alternative livestock cervidae for)	
chronic wasting disease, alternative)	
livestock monitored herd status for)	
chronic wasting disease, and import)	
requirements for cervids)	

1. On March 18, 2013, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on February 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.4.201 IDENTIFICATION OF ALTERNATIVE LIVESTOCK WITH THE EXCLUSION OF OMNIVORES AND CARNIVORES (1) through (2)(c) remain the same.

(3) Under the authority of 87-4-414, MCA, and 9 CFR 55 and 81, each alternative livestock will be marked with ~~a Montana official eartag issued by the department~~ two forms of official identification approved by the department. One approved method of identification will be the Montana official eartag.

(a) through (5) remain the same.

AUTH: 87-4-422, MCA
IMP: 87-4-422, MCA

32.4.301 INSPECTION OF ALTERNATIVE LIVESTOCK (1) through (1)(c) remain the same.

(i) ~~Prior to the movement of the animal, the owner must call a department-designated agent the department (Helena office), and file an intent to transport the animal and schedule the inspection of the animal at the destination vet clinic. Prior to movement of the animal, an alternative livestock veterinarian must review the animal's reported condition and determine it to be an "emergency."~~

(ii) ~~An inspection must be completed by a designated agent of the department~~ an alternative livestock veterinarian prior to movement from the vet clinic and return to the alternative livestock farm; and

(iii) remains the same.

(d) ~~Under circumstances of force majeure, the department may grant a waiver to transport an animal without prior inspection. Animals transported directly to an approved slaughter facility may be transported without prior inspection if the following conditions are met:~~

(i) all animals on the permit are required to be officially identified with a Montana eartag; and

(ii) prior to the movement of the animal, the alternative livestock licensee or their agent must call the department (Helena office) and request a transport permit number, provide the department the complete individual animal identification, age, sex, and species of each animal intended for shipment and the immediate destination of the animals; and

(iii) the department (Helena office) will issue a transport permit number that will be valid for 48 hours from the time of issue to allow movement of the animals from the alternative livestock farm to the approved slaughter facility; and

(iv) the transport permit number must be written on a department-approved form, a copy of which must accompany the animal(s) to the destination; and

(v) the alternative livestock licensee shall retrieve the alternative livestock animal head(s), all official identification tags, an official receipt for the animal(s) from the slaughter facility; and

(A) for animals meeting test age criteria, the licensee shall ensure the appropriate CWD testing samples are submitted by an alternative livestock veterinarian to an approved laboratory for testing; and

(vi) movement of alternative livestock must be in a secured and enclosed vehicle; and

(vii) the alternative livestock licensee shall provide a copy of the transport permit and an appropriate receipt from the slaughter facility to the department (Helena office) within five days of the animal's arrival at the slaughter facility.

(e) through (2)(b) remain the same.

(3) ~~Alternative livestock that are marketed for hunting purposes or an animal slaughtered on the alternative livestock farm must be inspected by a department-designated agent~~ an alternative livestock veterinarian.

(a) and (a)(i) remain the same.

(ii) The department (Helena office) must give permission for the owner or owner's agent to move the animal from the alternative livestock farm. A transport number or certificate of identification number will be given to the alternative livestock ~~farmer~~ licensee. This number must be listed on the bill of sale for the animal or other department-specified form. The valid bill of sale for the animal or department-approved form must accompany the animal to its destination.

(iii) remains the same.

(b) If a department-designated agent is present on the licensed alternative livestock farm at the time of ~~the hunt or slaughter~~, the department will waive the requirement to inform the Helena office, ~~and t~~ The inspection of the animal pursuant to 87-4-416, MCA, must be completed prior to movement of the animal carcass, meat, or parts from the alternative livestock farm.

(4) and (5) remain the same.

(6) The inspection shall permit the movement of the alternative livestock from the place of inspection immediately to the destination shown on the inspection certificate. No diversion or off-loading of the alternative livestock will be permitted without approval from the department and further inspection. A certificate of inspection shall permit the movement of the alternative livestock identified thereon for no more than ~~72 hours~~ ten days after ~~time~~ the date of issue inspection.

(7) remains the same.

AUTH: 87-4-422, MCA

IMP: 87-4-422, MCA

32.4.601 IMPORTATION OF ALTERNATIVE LIVESTOCK (1) through (9) remain the same.

(10) Importation of alternative livestock semen must meet the applicable requirements of ARM ~~32.2.220~~ 32.3.220.

AUTH: 87-4-422, MCA

IMP: 87-4-422, MCA

32.4.701 TRANSPORT WITHIN AND INTO MONTANA (1) Prior to movement of alternative livestock within Montana, the animals must be inspected pursuant to 81-3-203(1) through (3), MCA, excluding those exceptions outlined in ARM ~~32.3.304~~ 32.4.301.

(2) When transporting alternative livestock within and into Montana, the animal shipment shall be accompanied by the inspection certificate or transport permit and if a change of ownership has occurred, a valid bill of sale must accompany the shipment. If the animals are moved in more than one vehicle, the driver of each vehicle shall have in his possession a copy of the inspection certificate or transport permit, and bill of sale.

(3) through (5) remain the same.

AUTH: 87-4-422, MCA

IMP: 87-4-422, MCA

32.4.1301 DEFINITIONS In this subchapter, the following terms have the meanings or interpretations indicated below and must be used in conjunction with and supplemental to those definitions contained in 87-4-406, MCA, ARM 32.4.101, and any subsequent department rule or order including 9 CFR 55 and 81.

(1) through (9) remain the same.

(10) "CWD test-eligible cervids" means cervids, excluding wild cervids, ~~46~~ 12

months of age or greater that die for any reason.
(11) through (17) remain the same.

AUTH: 81-2-103, 87-4-422, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1302 REQUIREMENTS FOR MANDATORY SURVEILLANCE OF MONTANA ALTERNATIVE LIVESTOCK FARM CERVIDAE FOR CHRONIC WASTING DISEASE (1) through (3) remain the same.

~~(a) Tissue samples and/or specimens must be submitted from all CWD test-eligible alternative livestock farm cervids unless a waiver to tissue sample and/or specimen submission has been granted by the state veterinarian, in accordance to (3)(b).~~

~~(b) (a) The state veterinarian may, at his discretion, grant a waiver to tissue sample and/or specimen submission from alternative livestock farm cervids if the following conditions are met~~ The following conditions may be considered:

(i) through (4) remain the same.

(a) The monitored status of the herd may be reclassified to "~~monitored, status unknown~~ suspended."

(b) The cervid herd may be placed under a hold order ~~for 48 months.~~

(c) and (5) remain the same.

AUTH: 81-2-103, 87-4-422, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1303 ALTERNATIVE LIVESTOCK MONITORED HERD STATUS FOR CHRONIC WASTING DISEASE (1) through (1)(b)(iv) remain the same.

(v) Level V is the status of a herd after completion of five ~~or more~~ years of required surveillance. For those enrolled in the voluntary federal CWD herd certification plan, one year from the date a herd is placed in Level 5 status, the herd status will be changed to Certified, and will remain in Certified status as long as it is enrolled in the program, provided its status is not lost or suspended in accordance with these rules.

(c) "~~CWD monitored, status pending~~ Suspended" is the status of a herd that has been identified as a CWD affected, exposed, ~~or~~ trace herd or does not comply with ARM 32.4.1302.

AUTH: 81-2-103, 87-4-422, MCA
IMP: 81-2-103, 87-4-422, MCA

32.4.1309 IMPORT REQUIREMENTS FOR CERVIDS (1) All imported cervids, including wild cervids, alternative livestock farm and publicly or privately owned captive animals, must meet the import requirements of ARM Title 32, chapter 3, subchapter 2, Title 81, chapter 2, part 7, MCA, ARM 32.4.601, and any other rules or orders issued by the department under the authority of 81-2-103, MCA, as well those of 9 CFR 55 and 81.

(2) through (2)(b) remain the same.

(c) The exporting herd has participated in a CWD surveillance program that meets the department's requirements for a minimum of ~~42~~ 60 months prior to importation into Montana.

(3) and (4) remain the same.

AUTH: 81-2-103, 87-4-422, MCA

IMP: 81-2-103, 87-4-422, MCA

REASON: Alternative Livestock producers made requests to the department for changes in administrative rule. Based on these requests the department proposes the changes listed above. Producers have found the current 72-hour certificate of veterinary inspection is insufficient to accommodate weather events and other unforeseen circumstances. Changes to the transport rules will allow transport to a slaughter facility without prior veterinary inspection. Other proposed changes in transport rules are to conform to the new federal CWD rules, and to rescind Official Order 00-01-GF dated 2/17/2000.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., March 8, 2013.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m. March 8, 2013.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are 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 public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be more than 25, based upon the population of the state.

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 number 4 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.

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 January 22, 2013.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.21.4022 and 2.21.4028)
pertaining to equal employment)
opportunity, nondiscrimination, and)
harassment prevention)

TO: All Concerned Persons

1. On November 23, 2012, the department published MAR Notice No. 2-21-474 regarding a public hearing on the proposed amendment of the above-stated rules at page 2292 of the 2012 Montana Administrative Register, Issue No. 22.

2. On December 21, 2012, the department held a public hearing on the proposed amendment.

3. The department received no testimony or comments regarding the proposed amendment.

4. The department has amended ARM 2.21.4022 and 2.21.4028 as proposed.

By: /s/ Sheila Hogan
Sheila Hogan, Director
Department of Administration

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

Certified to the Secretary of State January 22, 2013.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) CORRECTED NOTICE OF
Rules I through XV (ARM 6.6.5201) ADOPTION
through 6.6.5215) relating to small)
business health insurance,)
purchasing pool, tax credits and)
premium assistance and premium)
incentive payments)

TO: All Concerned Persons

1. On August 11, 2005, the Commissioner of Securities and Insurance (CSI), Montana State Auditor, published MAR Notice No. 6-161 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1464 of the 2005 Montana Administrative Register, Issue Number 15. On September 22, 2005, the department published the notice of adoption at page 1771 of the 2005 Montana Administrative Register, Issue Number 18.

2. The reason for this correction notice is to replace a typographical error in the MAR citation in New Rule II (6.6.5201). The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

6.6.5201 DEFINITIONS For purposes of this subchapter, the terms defined in 33-22-2002, MCA, will have the same meaning in this subchapter unless clearly designated otherwise. The following definitions are in addition to those in 33-22-2002, MCA.

(1) remains the same.

(2) "Payments" means refundable tax credits, premium assistance payments, and premium incentive payments, all of which are defined in ~~33-22-2004~~ 33-22-2002, MCA.

AUTH: 33-22-2005, MCA

IMP: 33-22-2001, 33-22-2002, 33-22-2003, 33-22-2004, 33-22-2005, 33-22-2006, 33-22-2007, 33-22-2008, MCA

3. The replacement pages for this original notice were submitted to the Secretary of State on September 12, 2005.

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

/s/Jesse Laslovich
Jesse Laslovich
Chief Legal Counsel

Certified to the Secretary of State on January 22, 2013.

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

In the matter of the adoption of a) NOTICE OF ADOPTION OF A
temporary emergency rule closing the) TEMPORARY EMERGENCY RULE
Bighorn River in Big Horn County)

TO: All Concerned Persons

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

(a) Phillips 66 Pipeline is removing 275-foot long stretch of the Seminole Pipeline between Three Mile Access Site and Bighorn Fishing Access Site on the Bighorn River.

(b) The project requires heavy construction equipment in the river, an 80-foot pad in the river channel to accommodate excavation equipment, and possibly construction of rock ramps.

(c) Due to these conditions, persons floating the Bighorn River could be subjected to:

(i) collisions with heavy equipment; and

(ii) unexpected changes in the water current and velocity.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 2 of the 2013 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on February 15, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective January 15, 2013 when this rule notice is filed with the Secretary of State.

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

RULE I BIGHORN RIVER TEMPORARY EMERGENCY CLOSURE

(1) A portion of the Bighorn River is located in Big Horn County.

(2) The Bighorn River is closed to all public occupation and recreation including, but not limited to, floating, swimming, wading, and boating between Three Mile Access Site and Bighorn Fishing Access Site.

(3) This rule is effective until 12:01 a.m. Saturday, January 18, 2013.

(4) Signs regarding the emergency closure will be removed.

AUTH: 2-7-303, 87-1-303, MCA

IMP: 2-7-303, 87-1-303, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Bob Gibson, Department of Fish, Wildlife and Parks, 2300 Lake Elmo Drive, Billings, MT 59105; telephone (406) 247-2950; fax (406) 248-5026; or e-mail bgibson@mt.gov. Any comments must be received no later than March 1, 2013.

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

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

/s/ Mike Volesky

Mike Volesky, Deputy Director
Department of Fish, Wildlife and Parks

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State January 15, 2013.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.17.127, pertaining to)
prevailing wage rates for public works)
projects)

TO: All Concerned Persons

1. On November 8, 2012, the Department of Labor and Industry published MAR Notice No. 24-17-269 regarding the public hearing on the amendment of the above-stated rule on page 2254 of the 2012 Montana Administrative Register, issue no. 21.

2. On November 30, 2012, a public hearing was held at which time members of the public made oral and written comments and submitted documents. Additional comments were received during the comment period.

3. The department has thoroughly considered the comments and testimony received from the public. The following is a summary of the public comments received and the department's response to those comments:

COMMENT 1: Kim Rickard, Business Manager, Labors International Union of North America ("LIUNA") local #1686, stated that the rates for Laborers Group 2, especially the benefit rate, were "substandard" in all districts compared to Groups 1, 3, and 4, and that the rates in Group 1 are higher than Group 2 even though some of the occupations within Group 2 require state licensure and extensive training on a yearly basis. She stated the rates for Group 2 are diluted by contractors that pay below standard wages and requested that the department adopt the rates submitted by LIUNA local #1686.

RESPONSE 1: Pursuant to ARM 24.17.121(3), if there are five or more workers reported for an occupation in a district, the rates are set by survey data. When there are not five workers reported for an occupation in a district, the highest collective bargaining agreement submitted to the department for that occupation becomes the prevailing wage rate. The data compiled to set the preliminary rates provided 3 workers (0 with benefits for the Group 1 classification) and 553 workers (381 with benefits, for the Group 2 classification). Therefore, the Group 1 classification was set using a collective bargaining agreement in all districts and the Group 2 classification was set using data provided by contractors (union and nonunion) in all districts, which causes the rates for Group 2 laborers being lower than those of Group 1. The original data the department received from the Laborers' Union was not accurate and the Laborers resubmitted the data and also submitted additional data. The department has recalculated the rates for all groups of laborers. The revised rates are listed below in paragraph 5.

COMMENT 2: Jim Ryan Jr., Business Manager, Sheet Metal and Air Conditioning Contractors National Association #103 questioned the wage and fringes for Sheet Metal Workers and Heating and Air Conditioning in districts 1 and 4, and the wage in districts 9 and 10.

RESPONSE 2: The department has reviewed the rates for Sheet Metal Workers and Heating and Air Conditioning and has found no errors in the rates as set. The rates in districts 1 and 4 were set pursuant to ARM 24.17.121(3)(b). The wage rate in district 9 was set using the "50% rule" pursuant to ARM 24.17.121(3)(a). The wage rate in district 10 was set using the collective bargaining rates provided to the department pursuant to ARM 24.17.121(3)(c).

COMMENT 3: Kim Rickard, Business Manager, LIUNA #1686, John Johnson, International Union of Operating Engineers #400, Roy Levine, International Brotherhood of Electrical Workers ("IBEW") #768, Keith Allen, Business Manager, IBEW #233 and John Roeber, President, Montana Building Trades Association, all spoke in favor of the state surveying for heavy construction services wage rates in upcoming years.

RESPONSE 3: Based upon the comments submitted by interested persons, the department has decided it will survey for heavy construction services wage rates this year at the same time it surveys for building construction services rates.

COMMENT 4: Cary Hegreberg, representing the Montana Contractors Association, complimented the department's improved uniformity among worker classifications and geographic regions, but pointed out apparent discrepancies in wage rates and fringe benefits in the proposed building rate schedule among certain classifications between the various prevailing wage districts. The commenter stated his belief that some of the proposed wage rates and benefits cannot be reconciled with the wages and benefits being paid by members of the Montana Contractors Association and contractors that are signatory to collective bargaining agreements, as well as wage and benefit pressure caused by the economic "boom" conditions in eastern Montana. The commenter stated his belief there must be some differential disparity in the survey process, in order to account for what he called "outlier" wage and benefit rates. The commenter reminded the department that the department had the discretion to publish wage rates for "up to" ten prevailing wage districts intimating that fewer districts would help level or average out obvious wage and benefit discrepancies.

RESPONSE 4: The department acknowledges that certain wage and benefits rates may appear to be intuitively inconsistent given various market considerations in the construction industry. However, the department concludes that the rate setting process is clearly delineated in statute. The department distributes hundreds of surveys to contractors each year. Since completing and returning the survey is voluntary, a relatively small percentage of surveys are returned. The data contained in the returned surveys is accurately compiled and a weighted average is used for each craft, classification, or type of work, unless 50% of the skilled workers are

receiving the same wage. If 50% are receiving the same wage, then that wage is the prevailing wage. The department believes the answer to issues raised by the commenter, under the current statutory method, is for all parties to obtain a fuller response to the department's survey. To accomplish this, the department educates contractors and unions of the importance of responding to the survey on an individual basis and in group presentations. The department explains the process numerous times throughout the year in response to phone inquiries and the department has implemented "online" surveying in addition to the traditional mailed surveys. Additionally, the department calls survey respondents to confirm the work that is reported actually falls within the commercial building domain and rejects surveys that do not.

The department agrees that reducing the number of districts would have a leveling effect on prevailing wage rates. The department notes that if there was one statewide district, the established wage and fringe benefits would be the same throughout the state. The department also notes that historically Montana has experienced a wage rate discrepancy between various geographical regions of the state, and that rates that prevail in one area of the state are not necessarily the same as rates that prevail in other areas of the state. In addition to geographical differences, the department notes that there are historically differences between wage rates paid in more urban areas and areas that are less densely populated. Previous efforts by the department to reach a consensus on the make-up of revised districts have not been successful; however, the department remains open to working with stakeholder groups to reach such a consensus.

COMMENT 5: Mary Alice McMurray, Business Representative, Carpenters local #82, requested that the department not adopt the current federal heavy construction services rates, but asked that the department to update the existing 2011 heavy construction services rates to reflect their new wage and benefit rates.

RESPONSE 5: Pursuant to 18-2-414, MCA, the department concludes it has the option to either adopt by reference federal heavy construction rates and federal highway construction rates, or to survey employers in Montana for those rates. Because the department adopted by reference the federal 2011 heavy construction services rates, the department determines that statute does not allow the department to "update" previously adopted rates by adjusting some of those rates, when the federal rates incorporated by reference do not include those changes. Accordingly, the department declines the request.

COMMENT 6: In a letter to the department Mario Martinez, Business Representative, Carpenters #82, and Joe Baca, Contract Administrator, Carpenters #82, shared the above commenter's request.

RESPONSE 6: Please see response 5, above.

COMMENT 7: In letters sent to the department, Sean Smith, Business Manager/Financial Secretary, Plumbers and Pipefitters #41, and Charles Cashell, Business Manager, IUOE #400, support surveying for heavy construction rates.

RESPONSE 7: The department will survey for heavy construction services rates this year at the same time it surveys for building construction services rates.

COMMENT 8: Cary Hegreberg, Executive Director, MCA, submitted a letter from Pavlik Electric commenting on the need for the Electrician categories in the highway rates to be updated.

RESPONSE 8: The department notes that the Montana Department of Transportation gathers petitions from contractors, unions, and other trade organizations, in order to submit those petitions to the federal government to update the federal highway construction rates for Montana. The department respectfully suggests that the commenter contact MDT to determine the status of that process.

COMMENT 9: Bill Bentley, Executive Manager, Montana Chapter of the National Electrical Contractors Association, submitted a letter to the department outlining the same concerns of the above commenter, and concerning the scope of what the definition of "highway construction" covers.

RESPONSE 9: Please see response 8, above.

COMMENT 10: Various individuals and entities submitted additional data or documents for inclusion in the rate setting process during the comment period.

RESPONSE 10: The department has reviewed the information submitted. The department has incorporated the data as appropriate and has revised certain rates in line with the rate-setting standards. Revised rates are identified below in paragraphs 5 and 6, below.

4. After considering the comments submitted, the department amends ARM 24.27.127 exactly as proposed.

5. The following rates in the "Montana Prevailing Wage Rates for Building Construction Services 2013" publication, incorporated by reference in the rule, has been amended as follows, stricken matter interlined, new matter underlined:

Construction Laborers Group 1

District	Wage	Benefit
3	\$15.91 <u>15.22</u>	\$6.85 <u>7.55</u>
4	\$16.30 <u>13.62</u>	\$6.87
8	\$16.30 <u>14.70</u>	\$6.87 <u>6.98</u>

Construction Laborers Group 2

District	Wage	Benefit
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1	\$16.39	<u>16.54</u>	\$3.94	<u>5.12</u>
2	\$18.33	<u>18.20</u>	\$6.06	<u>5.91</u>
3	\$16.66	<u>17.45</u>	\$6.32	<u>6.73</u>
4	\$16.19	<u>16.49</u>	\$3.67	<u>4.88</u>
5	\$15.88	<u>16.19</u>	\$5.77	<u>6.33</u>
6	\$16.02	<u>16.58</u>	\$5.42	<u>6.09</u>
7	\$17.58	<u>17.72</u>	\$7.55	
8	\$16.07		\$4.55	<u>4.79</u>
9	\$12.41	<u>14.46</u>	\$6.87	
10	\$14.75	<u>17.25</u>	\$6.87	

Construction Laborers Group 3

District	Wage	Benefit
1	\$18.14 <u>17.71</u>	\$7.55

Construction Laborers Group 4

District	Wage	Benefit
1	\$16.35 <u>18.04</u>	\$7.01 <u>6.91</u>
2	\$22.48 <u>17.80</u>	\$7.32 <u>6.47</u>
3	\$18.16 <u>18.86</u>	\$6.60 <u>7.02</u>
4	\$17.35 <u>17.87</u>	\$6.87 <u>6.70</u>
6	\$18.86 <u>17.80</u>	\$6.75 <u>6.47</u>
7	\$18.86 <u>18.26</u>	\$7.55

Boilermakers

District	Wage	Benefit
1	\$30.00	\$21.76 <u>25.61</u>
4	\$30.00	\$21.76 <u>25.61</u>
8	\$30.00	\$22.61 <u>25.61</u>
10	\$30.00	\$22.61 <u>25.61</u>

Electricians

District	Wage	Benefit
1	\$26.67	\$11.47 <u>11.31</u>
2	\$26.67	\$10.99 <u>11.31</u>

Plumbers, Pipefitters, and Steamfitters

District	Wage	Benefit
7	\$28.31	\$15.54 <u>14.51</u>
8	\$28.31	\$15.54 <u>14.51</u>
9	\$28.31	\$15.54 <u>14.51</u>
10	\$28.31	\$15.54 <u>14.51</u>

Carpenters

District	Wage	Benefit
2	\$19.73 <u>20.90</u>	\$10.47

6. The following rates in the "Montana Prevailing Wage Rates for Non Construction Services 2013" publication, incorporated by reference in the rule, has been amended as follows, stricken matter interlined, new matter underlined:

Correction and Detention Officers

District	Wage	Benefit
4	\$12.83 <u>14.67</u>	\$3.74 <u>4.87</u>

Licensed Practical Nurse

District	Wage	Benefit
4	\$17.95	4.88 <u>\$5.09</u>

Mail Sorters and Processors

District	Wage	Benefit
1	\$10.84 <u>11.06</u>	\$4.84 <u>5.70</u>
2	\$10.66 <u>10.85</u>	\$5.02 <u>5.63</u>
3	\$10.66 <u>11.03</u>	\$5.02 <u>4.84</u>
4	\$10.69 <u>10.89</u>	\$4.78 <u>5.50</u>
5	\$10.71	\$4.84 <u>5.70</u>
6	\$10.66	\$5.84 <u>5.63</u>
7	\$10.66 <u>10.85</u>	\$5.02 <u>5.63</u>
8	\$10.64 <u>10.81</u>	\$5.19 <u>5.73</u>
9	\$10.61 <u>11.02</u>	\$4.53 <u>5.40</u>
10	\$10.66 <u>10.85</u>	\$5.02 <u>5.63</u>

Registered Nurses

District	Wage	Benefit
4	\$23.74	\$5.21 <u>4.90</u>

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ PAM BUCY

Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Submitted to the Secretary of State January 22, 2013.

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

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

TO: All Concerned Persons

1. On September 20, 2012, the Board of Medical Examiners (board) published MAR notice no. 24-156-77 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1809 of the 2012 Montana Administrative Register, issue no. 18.

2. On October 19, 2012, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the October 29, 2012, deadline.

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

COMMENT 1: Twenty-eight commenters supported the amendments as proposed. Generally, the commenters thanked the board for making the changes in the best interest of Montana, and discussed the difficulty of finding and keeping trained Emergency Medical Technicians (EMTs) in rural Montana, the high cost of attending training, and the hardships involved in serving as a volunteer EMT, many using personal experiences to illustrate their points. One commenter noted that the option of National Registry of Emergency Medical Technicians (NREMTs) registration is a good one for Montana EMTs who do not plan to move to another state, since Montana is capable of producing a test of the same quality as the NREMT test.

RESPONSE 1: The board appreciates all comments made during rulemaking.

COMMENT 2: Thirteen commenters supported the board as the governing body for Emergency Care Providers (ECPs), the option of requiring either NREMT registration or local accreditation, and board-approved ECP courses of instruction at the local level or with an organization offering an accredited curriculum. The commenters asked the board to extend the time period for completion of transition courses to one year.

RESPONSE 2: The board carefully considered the suggestion to grant a one-year transition period for ECPs taking transition courses, and agrees the timeframe is too short. The board is therefore amending ARM 24.156.2701, 24.156.2731, 24.156.2751, 24.156.2754, and 24.156.2757 to provide a longer transition period.

COMMENT 3: Nine commenters supported the amendments and particularly the elimination of NREMT registration as a requirement for EMTs. The commenters related difficulty in traveling to test centers, the associated expenses of testing at a national level, and personal experiences of rural living and traveling to test.

RESPONSE 3: The board appreciates all comments made during rulemaking.

COMMENT 4: One commenter supported the amendments, but wanted the 30-day requirement for medical directors in ARM 24.156.2732(1) to become 90 days.

RESPONSE 4: The board has carefully considered this recommendation to extend the 30-day requirement to notify the board of providing medical direction to 90 days. The board agrees that 30 days may not be enough time for a physician to be compliant with this notice requirement. However, since any noncompliance with board rules is a possible ground for disciplinary action, the board is amending ARM 24.156.2732 to extend the timeframe to 60 days and facilitate maximum compliance.

COMMENT 5: One commenter supported the cleanup and minor changes in the amendments, but stated that the accreditation program was "intuitively" the trend in the industry, although requiring the accredited program to be a two-year associate degree would be a hardship for rural services. The commenter appeared to oppose allowing an option to NREMT registration.

RESPONSE 5: The board carefully considered the suggested changes. The board is not requiring a two-year associate degree of an accredited program in order for an individual to meet licensing requirements.

COMMENT 6: One commenter supported replacing the use of "prehospital" to "out of hospital" in the rules, stating it more accurately reflects the work of EMTs, and supported alignment with National Registry. The commenter asked if endorsements could be included in the EMT full course and appeared to oppose Montana having an option to NREMT registration.

RESPONSE 6: The board notes that endorsements are numerous and above-and-beyond the basic training required at the national level. Endorsements allow

individuals to pursue more advanced skills as they deem necessary or desirable for their communities.

COMMENT 7: Three commenters opposed the amendments in their entirety, asking the board to change all of what was proposed to avoid crippling Montana's EMS programs and to not diminish the high quality training requirements of EMS providers.

RESPONSE 7: The board appreciates all comments made during rulemaking.

COMMENT 8: Two commenters opposed the move away from NREMT registration as a requirement for licensure, noting that 42 states require NREMT.

RESPONSE 8: The board appreciates all comments made during rulemaking.

COMMENT 9: Three commenters opposed the amendments and particularly paramedic training and the NREMT as the standard recognized by the Department of Transportation (DOT) and across the country. One commenter was concerned that the amendment to ARM 24.156.2751, regarding endorsements, would allow the medical director to sign off on competency of EMT-B, AEMTs, and paramedics without a minimum testing standard, leading to inconsistencies in training, skills, ability, and knowledge; ultimately creating inconsistencies in patient care. The commenters suggested that Montana would make it easier to become a paramedic and noted that 44 states require accreditation for paramedic level training, asserting that Montana is bucking a national trend.

RESPONSE 9: The board notes that the NREMT is a private company registration. The standards used by the NREMT and the board are federal DOT standards that are not part of, nor promulgated by, the NREMT. The minimum standards adopted by the board in rule and used by medical directors are the federal DOT standards.

COMMENT 10: Four commenters opposed the amendments moving away from national registration and cited the threat that local training poses to portability of licensure. Two suggested there would be future problems in standards, professional opportunity, and patient care, and recommended that the board not amend the rules as written. Commenters urged the board to continue supporting NREMT registration, and offered the history of the EMS Workforce Agenda for the Future, noting that 46 states rely on the NREMT.

RESPONSE 10: The board understands the concerns about portability, but notes that every state that uses the NREMT registration utilizes it differently. It is no longer the sole method for EMT licensure and portability is determined on a state-by-state basis. Montana does not set the standards of other state's reciprocity or portability requirements. An individual seeking to be trained in Montana who has concerns about portability can still opt for NREMT registration if that individual feels that the registration is necessary for his or her career.

COMMENT 11: One commenter asked the board to adopt the EMS Educational Agenda for the Future as set forth by the DOT's National Highway Traffic Safety Administration Standards (NHTSA) and to continue to utilize the NREMT certification process. The commenter also requested that the current EMT-B skills endorsement system be maintained, and opined that creating a separate EMS training and certification system just for Montana would be costly and cumbersome.

RESPONSE 11: The board has embraced the DOT's NHTSA and is retaining the current EMT-B skills endorsement system, with the exception of endotracheal intubation. The board is removing this endorsement because of national poor patient outcomes and a lack of data to support its efficacy.

COMMENT 12: One commenter supported the amendments except the change to ARM 24.156.2717(4) which requires AEMTs to identify the medical director for relicensure like a paramedic. The commenter also suggested that ARM 24.156.2732(7)(a) should allow family nurse practitioners to give online medical control, even if requiring MD/DO oversight. Additionally, the commenter suggested the board amend New Rule II to require EMTs attain 24 hours of continuing education credit for renewal.

RESPONSE 12: The board believes that medical practitioners providing medical oversight to all levels of EMTs must be identified to ensure patient safety. The board has no jurisdiction over nurses and cannot authorize nurse practitioners to give online medical control. Additionally, continuing education is competency-based using national standards and the board sets required CE hours to ensure the competency is met.

COMMENT 13: One commenter asked how to locate the skill verification form for moving from EMT-FR, with endorsements, to the new EMT. Another asked if the board had developed and approved the I99 to paramedic bridge program, when it will be available, and what forms will be needed.

RESPONSE 13: The board appreciates the commenters' questions and notes that the information is available on the board's web site.

COMMENT 14: One commenter asked if EMT first responders with no endorsement and without doing the skill verification, would then not qualify for a license? The commenter questioned if an EMT-B with fewer than four endorsements, but no skills verification, would become an EMT with or without endorsements? Lastly, the commenter asked if an EMT basic with four endorsements has to do the skills verification to remain an EMT with endorsements, or whether the EMT would revert to an EMT with no endorsements? The commenter also questioned why the board failed to include a provision to grandfather volunteer responders.

RESPONSE 14: The board has carefully considered these questions. With the exception of first responders, the board does not mandate advancement to any other

level of EMTs/ECPs. However, first responders without additional skills verification cannot meet the DOT EMR standards and cannot be licensed at the EMR level.

COMMENT 15: One commenter supported the amendments to allow EMS services to continue to design their courses to meet the needs of the community and volunteer agencies, and supported the option of registry or nonregistry pathways.

RESPONSE 15: The board appreciates all comments made during rulemaking.

COMMENT 16: One commenter opposed the proposed rules in their current form and requested the board reject them. The commenter made an equal protection argument stating that offering options to NREMT registry was discrimination. The commenter stated that the NREMT test is not going away and noted that the board has five additional years to write better rules.

RESPONSE 16: The board believes that an equal protection argument is misplaced, since the proposed rules provide more options to individuals seeking to become EMTs.

COMMENT 17: One commenter disagreed with the proposed rule changes stating such changes will establish a separate, unequal, and nonaccredited licensing system. The commenter asserted that doctors, physician assistants, and respiratory therapists are tested and accredited on a national level.

RESPONSE 17: The board notes that it relies on a national curriculum to maintain consistency of standards.

4. The board has amended ARM 24.156.2705, 24.156.2711, 24.156.2713, 24.156.2715, 24.156.2717, 24.156.2719, 24.156.2741, 24.156.2745, 24.156.2761, 24.156.2771, and 24.156.2775 exactly as proposed.

5. The board has adopted NEW RULES I (24.156.2752), II (24.156.2718), III (24.156.2755), IV (24.156.2707), and V (24.156.2708) exactly as proposed.

6. The board has amended ARM 24.156.2701, 24.156.2731, 24.156.2732, 24.156.2751, 24.156.2754, and 24.156.2757 with the following changes, stricken matter interlined, new matter underlined:

24.156.2701 DEFINITIONS (1) through (1)(f) remain as proposed.

(g) "Clinical preceptor" means an individual trained to a level greater than the student, who is responsible for supervising and teaching the student in a clinical setting in an approved course or program, under the supervision of the medical director or lead instructor in the case of an EMT-basic course or EMT course after December 31, ~~2012~~ 2013.

(h) through (j) remain as proposed.

(k) "Emergency medical technician - basic" or "EMT-B" means an individual licensed by the board as an EMT-B or, after January 1, ~~2013~~ 2014, as an "emergency medical technician" or "EMT".

(l) "Emergency medical technician - first responder" or "EMT-F" means an individual licensed by the board as an EMT-F or, after January 1, ~~2013~~ 2014, as an "emergency medical responder" or "EMR".

(m) "Emergency medical technician - intermediate" or "EMT-I" means an individual licensed by the board as an EMT-I or, after January 1, ~~2013~~ 2014, as an "advanced emergency medical technician" or "AEMT".

(n) "Emergency medical technician - paramedic" or "EMT-P" means an individual licensed by the board as an EMT-P or, after January 1, ~~2013~~ 2014, as a "paramedic".

(o) through (v) remain as proposed.

24.156.2731 FEES (1) remains as proposed.

(a) EMT-F, or after December 31, 2012 <u>2013</u> , an EMR application fee	\$20
(b) EMT-B, or after December 31, 2012 <u>2013</u> , an EMT application fee	30
(c) EMT-I, or after December 31, 2012 <u>2013</u> , an AEMT application fee	40
(d) EMT-P, or after December 31, 2012 <u>2013</u> , a paramedic application fee	60

(e) remains as proposed.

(f) EMT-F, or after December 31, 2012 <u>2013</u> , an EMR biennial renewal fee	20
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(g) EMT-B, or after December 31, 2012 <u>2013</u> , an EMT biennial renewal fee	30
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(h) EMT-I, or after December 31, 2012 <u>2013</u> , an AEMT biennial renewal fee	40
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(i) EMT-P, or after December 31, 2012 <u>2013</u> , a paramedic biennial renewal fee	60
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(j) through (3) remain as proposed.

24.156.2732 MEDICAL DIRECTION (1) Within ~~30~~ 60 days of taking on the responsibilities as an ECP medical director, a physician or physician assistant shall:

(a) through (9) remain as proposed.

24.156.2751 LEVELS OF ECP LICENSURE INCLUDING ENDORSEMENTS

(1) remains as proposed.

(2) On January 1, ~~2013~~ 2014, the levels of licensure will be adjusted as follows:

(a) and (b) remain as proposed.

(c) EMT-FRs with an ambulance endorsement and a skill verification form prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued an ECP-EMT license.

(d) EMT-Bs who have completed a skill verification form prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued an ECP-EMT license.

(e) EMT-Bs who have the airway endorsement and completed a skill verification form prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued an ECP-EMT license with an airway endorsement.

(f) EMT-Bs who have the medication endorsement and have completed a skill verification form prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued an ECP-EMT license with a medication endorsement.

(g) EMT-Bs who have the IV and IO (intravenous infusion and intraosseous infusion) initiation endorsement and have completed a skill verification form prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued an ECP-EMT license with an IV and IO (intravenous infusion and intraosseous infusion) initiation endorsement.

(h) EMT-Bs who have the IV and IO maintenance endorsement and have completed a skill verification form prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued an ECP-EMT license with an IV and IO maintenance endorsement.

(i) EMT-Bs with an airway, IV/IO (initiation and maintenance), monitoring, medication endorsement, and a skill verification form prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued an ECP-AEMT license with a medication endorsement.

(j) EMT-Intermediate 99s who have completed a skill verification form prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued an ECP-AEMT licensure with an I-99 endorsement.

(k) EMT-Intermediate 99s who have completed the paramedic bridge program as developed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued a paramedic license.

(l) EMT-Paramedics who have completed a transition program developed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued a paramedic license.

(m) EMT-Paramedics who have a critical care endorsement prescribed by the board and on file with the board before December 31, ~~2012~~ 2013, will be issued a paramedic license with a critical care endorsement.

(3) Following January 1, ~~2013~~ 2014, the levels of licensure and endorsements allowed are as follows:

(a) through (d) remain as proposed.

24.156.2754 INITIAL ECP COURSE REQUIREMENTS (1) remains as proposed.

(2) EMT-F or, after December 31, ~~2012~~ 2013, EMR courses shall be managed by a lead instructor. The lead instructor shall maintain overall responsibility for the quality, consistency, and management of the course. The lead instructor shall:

(a) conduct the EMT-F or, after December 31, ~~2012~~ 2013, EMR courses in accordance with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures;

(b) through (d) remain as proposed.

(3) EMT-B or, after December 31, ~~2012~~ 2013, EMT courses shall be managed by a lead instructor. The lead instructor shall maintain overall responsibility for the quality, consistency, and management of the course. The lead instructor shall:

(a) conduct the EMT-B or, after December 31, ~~2012~~ 2013, EMT courses in accordance with current board-approved USDOT curriculum, including revisions and statewide protocols, policies, and procedures;

(b) through (4) remain as proposed.

24.156.2757 ECP CLINICAL REQUIREMENTS (1) remains as proposed.

(2) EMT-B or, after December 31, ~~2012~~ 2013, EMT courses or approved programs must assure that the student completes a minimum of ten hours of observational time with an EMS. An alternative patient care setting may be used if an EMS is not available. During this time, the student shall complete and document:

(a) through (3) remain as proposed.

BOARD OF MEDICAL EXAMINERS
ANNA EARL, MD, PRESIDENT

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State January 22, 2013

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 III pertaining to home)
and community-based services)
(HCBS) state plan program)

TO: All Concerned Persons

1. On July 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-595 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 1509 of the 2012 Montana Administrative Register, Issue Number 14. On September 6, 2012, the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Adoption at page 1733 of the 2012 Montana Administrative Register, Issue Number 17. The purpose of the amended notice was to inform the public that due to comments to this rule the department clarified reimbursement rates and wraparound facilitation services and extended the comment period.

2. The department has adopted New Rule III (37.87.1315) as proposed.

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

RULE I (37.87.1313) 1915(i) HOME AND COMMUNITY-BASED SERVICES (HCBS) STATE PLAN PROGRAM FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: FEDERAL AUTHORIZATION AND AUTHORITY OF STATE TO ADMINISTER PROGRAM (1) through (3) remain as proposed.

(4) The 1915(i) home and community-based services state plan program for youth with serious emotional disturbance must be delivered in accordance with the requirements and limitations of the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual dated ~~October 1, 2012~~ January 1, 2013. A copy of the manual may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 Sanders, P.O. Box 4210, Helena, MT 59604 or at <http://www.dphhs.mt.gov/mentalhealth/children/>.

AUTH: 53-6-113, MCA
IMP: 53-6-101, MCA

RULE II (37.87.1314) 1915(i) HOME AND COMMUNITY-BASED SERVICES (HCBS) STATE PLAN PROGRAM FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE: REIMBURSEMENT (1) remains as proposed.

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

(a) remains as proposed.

(b) the fees stated in the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual dated ~~October 1, 2012~~ January 1, 2013 which the department adopts and incorporates by reference. A copy of the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual dated ~~October 1, 2012~~ January 1, 2013 may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Children's Mental Health Bureau, 111 N Sanders, P.O. Box 4210, Helena, MT 59604 or at <http://www.dphhs.mt.gov/mentalhealth/children/>.

(3) and (4) remain as proposed.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

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

COMMENT #1: Several commenters expressed concern about the proposed unit and rate for wraparound facilitation (proposed "encounter" unit of 50 minutes minimum with only one unit allowable per day and proposed encounter rate that allows billing only for face-to-face time working with the youth and family). The commenters noted this unit does not allow for the time flexibility facilitators need to do their work and does not allow billing for non-face-to-face care coordination and paperwork which are required when providing wraparound facilitation.

RESPONSE #1: The department has changed the unit of service for wraparound facilitation back to a 15-minute unit and will allow some specific non-face-to-face care coordination activities to be billable. The policy manual has been updated to reflect these changes and to include a table of billable activities. Paperwork activities will still not be billable as paperwork time was included in calculation of the unit rate.

COMMENT #2: A comment was received suggesting a rate of \$18.75 per 15-minute unit for wraparound facilitation, to incentivize providers to choose it over case management and home support services (formally therapeutic family care) and to account for the supervision and coaching required.

RESPONSE #2: The rate setting process and analysis recently completed does not support a higher rate for wraparound facilitation than the \$15.00 per 15-minute unit, which will become effective January 1, 2013. Supervision and coaching were considered when setting the rate.

COMMENT #3: Two commenters asked why outdoor behavioral programs/wilderness programs are not included among qualified providers for the crisis intervention service. One of the commenters stated that a particular short wilderness program fits the intent of the service.

RESPONSE #3: The wilderness program referred to above has a model of scheduled wilderness trips, most of those being much greater than 14 days duration. The crisis intervention service has a maximum of 14 days, with the provider working intensively with the youth and family during that time. Also, given that the wilderness trips are planned for specific times and crisis isn't planned, the wilderness program model does not appear to be a good fit for the crisis intervention service. The department is open to further discussion about potential options.

COMMENT #4: Several commenters noted concern about the setting of an encounter rate for in-home therapy with the encounter unit being a minimum of 50 minutes face-to-face care, given that youth and families referred for these services may not be able to sit through a session of that length. Commenters requested a return to a 15-minute unit and rate to allow needed flexibility for providers of this service for this population and suggested that some non-face-to-face time be billable as well, such as telephone support in crises.

RESPONSE #4: The department considered work-related components (including non-face-to-face components) in the rate as part of the rate-setting process. The unit will remain an encounter with a minimum of 50 minutes with the assumption that in-home therapy is a scheduled service (for the therapy itself), which is the practice model for licensed mental health professionals is providing mental health therapy. The in-home therapist may bill one encounter per day unless they attend a wraparound team meeting for the same youth on the same day, in which case they can bill for both. The billing code will be the same for the encounter and the wraparound team meeting, but an informational modifier will be added to the code to denote the team meeting. The department did not include a separate unit and rate of reimbursement for an in-home therapist who may respond to a crisis. The department remains open to further evaluation and consideration of the type of unit for the in-home therapy service.

COMMENT #5: Several commenters noted concern about the requirement that in-home therapists provide crisis response during and after work hours and suggested that a way be provided to bill for that requirement.

RESPONSE #5: If a provider responds to a crisis in person and spends 50 or more minutes working with the youth or family, the provider may bill for an encounter if they have not provided therapy for the youth/family on the same day. Non-face-to-face crisis responses are not billable. As noted above, non-face-to-face activities were considered in the setting of the rate for this service. Family teams generally have crisis plans that include the therapist as one of a number of potential responders, not the only one. The department remains open to discussion and consideration about more clearly defining this expectation.

COMMENT #6: Several commenters suggested that the department reconsider the requirement that in-home therapists be individually licensed as that limits the pool of providers and the capacity of mental health centers to serve those youth.

Commenters noted that there may not be enough licensed therapists in rural communities who would want to do in-home therapy. Commenters proposed that in-training therapists be allowed to provide in-home therapy.

RESPONSE #6: The department will maintain the requirement that in-home therapists be individually licensed given the complexity and intensity of the needs of the target population. If access to in-home therapy becomes an issue in some geographical areas, the department will reconsider this suggestion.

COMMENT #7: One commenter noted that requiring therapy be provided in the home is not always clinically appropriate and the family may not want it to occur in their home.

RESPONSE #7: The department agrees and has amended the language in the policy manual to state that it may be in the residence of the youth or in community settings chosen by the family at time convenient for the youth and family.

COMMENT #8: A commenter asked whether the requirement that the in-home therapist develop and write an individual treatment plan meant that it should be a separate plan from the wraparound plan and if so stated that it defeats the purpose of having one plan for the family based on need. The commenter suggested that perhaps instead the therapist could stipulate specific interventions in the wraparound plan relating to the therapy.

RESPONSE #8: The individual treatment plan for therapy is developed by the therapist with the youth and family based on their needs and is directly integrated with the wraparound plan. Specific interventions relating to therapy can be included in the wraparound plan.

COMMENT #9: A commenter asked who the UR contractor and regional care coordinator is and what will their assessments look like.

RESPONSE #9: The UR contractor is Magellan. The regional care coordinator (RCC) is the current RCC for Magellan. Their assessments will be a face-to-face assessment with the youth and family as part of the eligibility determination for 1915(i) services. This independent face-to-face assessment is a Center for Medicare and Medicaid Services (CMS) requirement. This assessment begins to determine the strengths, needs, family culture, and services the youth might need within the 1915(i).

COMMENT #10: A commenter asked for clarification regarding the statement that youth enrolled are not eligible for other types of case management services and asked if that includes developmental disabilities (DD) case management.

RESPONSE #10: Yes, it does include all other types including DD case management.

COMMENT #11: One commenter asked if education and support services should include education around empowerment, self-advocacy, and assessing resources, not just diagnosis and meds.

RESPONSE #11: This service is specific to helping parents and other caregivers understand the youth with a serious emotional disturbance and learn their own ways of responding to and providing the best care to assist the youth. Peer to peer support services generally focus more on empowerment, self-advocacy, and assessing resources.

COMMENT #12: A commenter noted the policy manual states the family support specialist will be under the guidance of the in-home therapist, but the in-home therapist is not a required part of the program. The commenter asked if there is no in-home therapist, whose guidance is the family support specialist under?

RESPONSE #12: If there is a therapist providing services through regular Medicaid state plan, the family support specialist (FSS) would follow the guidance of that therapist. If there is no therapist, the FSS will work with the family and youth on items identified in the service plan. The agency providing FSS service provides the clinical supervision for the FSS whether or not there is a therapist on the wraparound team.

COMMENT #13: A commenter asked about the freedom of choice of all other waiver and state plan services and asked if any other waiver services, including the DD waivers, can be provided in conjunction with the 1915(i).

RESPONSE #13: Families have a choice of which state plan services and waiver to enroll in if the youth is eligible. Youth cannot be enrolled in the 1915(i) and a Medicaid home and community-based waiver concurrently.

COMMENT #14: A commenter asked if specialized evaluation services include speech, occupational therapy, or other evaluation services that are specialized and relevant to care and not typically covered under Medicaid.

RESPONSE #14: Specialized evaluation services are targeted to mental health and behavioral issues. If a need for other evaluation were identified by the family and team, strategies for addressing and paying for those resources will be included in the service plan. Medicaid state plan or services available through the schools would be accessed if possible.

COMMENT #15: One commenter asked if crisis intervention services could be provided in a setting besides shelter or group home, such as a foster home or respite home with crisis staffing.

RESPONSE #15: The department will only allow this service in shelter or group homes given the expectation that the provider will have staff working intensively with the youth and family in the provider's facility and in the home. The crisis intervention

services will include de-escalating the crisis, identifying what led to the crisis and how to prevent a reoccurrence, provide tools and practice skills to help head off similar crises in the future. It will also include coordination with the wraparound team so that gains are maintained after the service has been provided.

COMMENT #16: A commenter stated that ten days is an insufficient time to procure a facilitator, compile the team, and have a care plan meeting and will result in a poor initial plan. The commenter suggests that the strengths, needs and cultural discovery (SNCD) be done within ten days and the service plan be completed within 21 days, consistent with the requirements for other Medicaid services.

RESPONSE #16: Since the department received this comment, the policy manual has been updated to reflect the changes below. CMS advised the department that to comply with conflict of interest requirements under the 1915(i), the state must demonstrate in its state plan application that there is an independent evaluation of eligibility, an independent assessment and an individual service plan conducted by an entity that does not have a financial interest in provider of home and community-based services. The brief initial service plan will be developed by the regional care coordinator rather than the facilitator and the timeframes referenced in the comment no longer apply.

COMMENT #17: A commenter asked for more information on the prior authorizations for community-based psychiatric rehabilitation and support (CBPR&S) and asked if it is required for a youth to be enrolled in CSCT and receiving CBPR&S during those same times as a supplement.

RESPONSE #17: For a youth in the 1915(i), when the youth is in day treatment, prior authorization is required for a youth to received CBPR&S during day treatment program hours. The prior authorization request is sent to the children's mental health regional manager for approval. The form is located on the Magellan web site or can be requested from the regional manager. Regarding concurrent CBPR&S and CSCT, regular state plan Medicaid rules apply.

COMMENT #18: One commenter stated that therapeutic foster care is not mentioned and asked how it is going to blend with the 1915(i).

RESPONSE #18: Therapeutic foster care will not be allowed concurrent with the 1915(i) if the family chooses to receive therapeutic foster care. Due to recent rule changes for therapeutic foster care and home support services, the core services required in those programs are duplicative of several services in the 1915(i). Families can choose which program they prefer if the youth is eligible.

COMMENT #19: Several commenters requested revision to the requirement for a youth peer-to-peer specialist, which as written, indicate that youth peer-to-peer specialists must have parented a youth with SED.

RESPONSE #19: The department agrees with the commenter and the language of the manual was clarified to indicate that having parented a youth with SED while the youth was receiving mental health services is a requirement only for the peer-to-peer specialist who is a parent or legal representative.

COMMENT #20: A comment was received asking for the rationale behind the new peer-to-peer rate and requesting consideration of increasing the peer-to-peer rate to be closer to the family support specialist rate.

RESPONSE #20: The department's rate setting process and analysis does not support a rate higher than the proposed rate. The department is willing to ask providers to participate in time studies for further analysis of rates for services when there are provider concerns about adequacy of the rates.

COMMENT #21: A commenter requested that the requirement for peer-to-peer specialist services remove the criterion that the peer-to-peer specialist be an adult who also received mental health services as a youth.

RESPONSE #21: The policy manuals have been amended to reflect that a person providing peer-to-peer services to a parent/legal representative does not have to have received mental health services as a youth.

COMMENT #22: A commenter asked for clarification whether a youth can receive 1915(i) services if the youth has been placed in a shelter for reasons other than placement as a crisis intervention service. The commenter suggested the department consider allowing the family to engage in wraparound services as a way of addressing the problems that are preventing a return of the youth to the family home.

RESPONSE #22: The wraparound team can continue to work with the family and the youth if the shelter care provider is in agreement, if the youth is temporarily out of the home in shelter care. The main and usual residence of the youth must be in home in order for the youth to remain eligible for the 1915(i).

COMMENT #23: A commenter requested clarification of the requirement that the family support specialist (FSS) works under the guidance of the in-home therapist, given that there is no guidance about who supervises the FSS. The commenter also requests consideration of allowing the provider agency that employs the FSS to provide a licensed therapist to provide the guidance, rather than obligating the in-home therapist to do it.

RESPONSE #23: The provider agency is required to provide clinical supervision for the FSS. It is assumed that the provider agency supervises the FSS. The department welcomes further discussion about this matter. At this time, the requirement will remain the same given the need for close alignment of the work of the in-home therapist and the FSS.

COMMENT #24: A commenter recommended that the department strike the requirement that respite providers be employees of an agency given that it is cost prohibitive for agencies to employ respite providers.

RESPONSE #24: The department will keep the requirement that respite providers be employed by an agency at this time. Provider agencies may offset administrative costs by paying respite providers a portion of the billed amount for the service. The department welcomes further discussion on this issue, as access to respite is a significant need of the youth and families, as noted by the commenter.

COMMENT #25: A commenter requested guidelines for agencies to follow to determine whether respite providers are physically and mentally qualified.

RESPONSE #25: The department does not have guidelines for this determination. The department welcomes provider input and discussion on this issue.

COMMENT #26: A commenter asked for details expected to be in the contracts between service provider and family when crisis intervention services are provided.

RESPONSE #26: The department will work with providers of this service to develop a template for the contracts that will include specific language regarding the agreement with the family that the plan is for the child to return home noting the anticipated return date. Details of each contract will be worked out between the provider and the family.

COMMENT #27: One commenter requested the department consider allowing the in-home therapist and wraparound facilitator to work for the same agency, at family's request, to allow for family voice and choice. The commenter noted this exclusion may restrict access of rural families to in-home therapy where there are few providers.

RESPONSE #27: Centers for Medicare and Medicaid Services (CMS) requires strong safeguards against conflict of interest in service provision. The safeguards must be written into the application for home and community-based services. The department must keep the current language.

COMMENT #28: Several commenters noted that the department has been advised the fees for services are inadequate, the fees structure will not attract new providers, and current providers will not be able to continue to afford to provide services. The commenters request that the department consider seeking input from providers about the cost to provide the services and areas that the fee structure can be adjusted to support adequate rates for certain services.

RESPONSE #28: The department will continue to seek and welcome input from providers about the cost to provide services and the costs that could be adjusted to support rate changes. The department did seek provider input during the recent

rate-setting process and will continue to welcome input from providers on the cost of providing these services.

COMMENT #29: One commenter asked why time wasn't considered in a rate for travel and asking the department to consider removing the restriction of "25 miles or greater" from the "geographical factor" and to consider increasing the rate for the factor to help defray cost of travel time away from the office or to consider adding a fee to cover travel time.

RESPONSE #29: The department will keep the current rate and requirements for the geographical factor the same at this time. Travel time was considered in the setting of the rates for each service. The geographical factor is designed to assist providers willing to serve youth and families who live more than 25 miles from the provider's usual business location. The department welcomes additional input and discussion on this matter.

COMMENT #30: A commenter questioned the continuation of the single approach of high fidelity wraparound services as the program expands to all qualified Montanans, given that there are also other credible evidence-based approaches that would increase families' ability to have choice. The commenter noted this could be done within the committed approach of wrapping services around a distressed family.

RESPONSE #30: The department appreciates the suggestion. Families currently can choose other service options that wrap services around them. The department will continue to require high fidelity wraparound facilitation for care coordination for 1915(i) services as when practiced with fidelity it is very effective. The department welcomes more discussion on this topic.

COMMENT #31: One commenter stated that the department seems to be engaging the UR contractor to do an assessment during the eligibility determination process that children's mental health bureau regional program manager could do with the additional costs and delays of the contractor.

RESPONSE #31: The department has selected the UR contractor to conduct the face-to-face needs assessment as an entity without conflict of interest, which is a federal requirement for the 1915(i). Additionally, the UR contractor may be familiar with the youth and the circumstances of the youth as there may be history of service authorizations in the UR contractor's system.

COMMENT #32: One commenter suggested that language be changed in the eligibility requirements for the 1915(i) services to remove the section requiring that a youth be receiving specific outpatient mental health services in the community and not making progress and replacing that language with youth at risk of psychiatric residential treatment facility (PRTF) placement.

RESPONSE #32: The department has been advised by CMS to make the initial needs-based eligibility criteria and re-evaluation criteria the same. The needs-based criteria must be less stringent than level of care criteria for PRTF. The department is approaching the implementation of this new program conservatively in order to stay within budget. The needs-based eligibility requirements are one means of regulating the number and severity of youth enrolling in the program. The department has the ability to request amendment to the 1915(i) based on the needs of the youth and the cost of the program in relation to projected budget.

COMMENT #33: A commenter asked where co-occurring services are or will be provided once the needs of the youth for this service is identified.

RESPONSE #33: The department has engaged with Dr. Richard Shepler and Patrick Kanary from Case Western Reserve University to provide training in integrated co-occurring treatment services to interested providers. In addition, through a substance abuse and mental health administration (SAMHSA) grant to increase capacity for co-occurring treatment for adolescents, two providers will be selected via a request for proposal process to be trained in integrated co-occurring treatment and to provide it in their service area. Co-occurring services are expected to be provided in the family home or a community setting convenient for the youth and family.

COMMENT #34: A commenter suggested that the rate for the FSS should be increased to \$17.50 rather than the proposed rate of \$14.00 per 15 minutes.

RESPONSE #34: The recent rate-setting process and analysis does not support a rate higher than the proposed rate. The department is willing to ask providers to participate in further analysis or time studies for services where there are provider concerns about adequacy of the rates.

COMMENT #35: One commenter expressed concern that all payment allowed for services requires face-to-face contact yet providers are serving high risk families over great distances and during an electronic age. The commenter suggests consideration of a wraparound model which could be attached to an intensive family service in place which is a bundled rate.

RESPONSE #35: The department is not considering a bundled rate for the 1915(i). Services are outlined and proposed to be reimbursed as a fee for service. Paid claims information provides the department data about the actual services provided. The department welcomes continued discussion about how HCBS services can best be provided.

COMMENT #36: One commenter noted the details of the requirements for serious occurrence reports are unclear and suggested that they simply address what happened, were there witnesses, what immediate action was taken, and are there any changes in provider operation that would reduce risk of this happening again.

RESPONSE #36: The department has required the completion of serious occurrence reports since the implementation of the PRTF Waiver five years ago. The department will develop a training tool for the CMHB regional managers to use to inform providers about the completion of the serious occurrence report (SOR). The SOR is similar to an incident report. It is to be completed by the person who witnessed or had knowledge of the incident, describes what occurred, and notes whether Child Protective Services or law enforcement was involved. The SOR is submitted to the CMHB regional manager, who reviews and then completes the bottom part of the form. The provider agency should also receive a copy. Investigation depends on the nature of the incident. SORs are reviewed quarterly by the quality review committee to identify trends and discuss changes in practice that may be needed.

COMMENT #37: One commenter noted that the requirement that a youth enrolling in 1915(i) services must have been admitted to a PRTF defeats the purpose of avoiding placing youth in PRTFs. Commenter also notes that additional eligibility requirements that a youth must be receiving specific outpatient services and not be making progress will exclude access to the program for youth who live in areas where those specific outpatient services are not available. Commenter also asks how lack of progress will be objectively determined.

RESPONSE #37: Previous admission to a PRTF is one of several possible factors in eligibility determination. It is not required that the youth has had a previous PRTF admission. The department is approaching the implementation of this new program conservatively in order to stay within budget. The eligibility criterion is one means of regulating the number and severity of youth enrolling in the program. Access to the program for all eligible youth who need it statewide is very important. If the department finds that the eligibility requirements are a significant impediment to access in some areas, the department can request to amend the eligibility requirements. Lack of progress in the outpatient services will be assessed by the UR contractor based on referral information and accompanying reports from current service providers.

COMMENT #38: Several commenters stated that in appendix A of the policy manuals there is language indicating that the therapist and other providers can only bill for face-to-face time with the youth present. The language is "Total time billed using one or multiple procedure codes may not exceed the total actual time spent with the Medicaid youth."

RESPONSE #38: It is the department's intent that the services are to be provided related to the youth's needs and the family's needs in support of the youth. The youth will not be present every time a service is provided. Family therapy can occur with parents or legal representatives without the youth present.

COMMENT #39: One commenter stated that a grievance procedure and a fair hearing process are allowed for in the Rules for the 1915(i), but not described. Commenter asks what the grievance process is as well as the resolution process for

families. Commenter suggests that the grievance process and fair hearing process be made available in writing to families before or shortly after enrollment.

RESPONSE #39: The department appreciates the suggestion that written information on these processes be provided to families. Additionally the department will make it available on the CMHB web site so that providers will have access to the information as well.

COMMENT #40: A commenter asked for explanation of how much money in total is available for the 1915(i) and how this money is distributed among 56 youth over a period of two years. The commenter referred to figures in the fiscal impact statement regarding projected cost.

RESPONSE #40: The department will provide the services to eligible youth statewide. The projected costs and number of youth served figures were based on paid claims and usage of services in the PRTF waiver and in state plan Medicaid services often provided to the target population. The department cannot provide a figure for how much money is available. Costs for each youth are directly related to the service plan for that youth.

COMMENT #41: A commenter asked where the money comes from for the 1915(i), why the billing process changed, and asked why billing issues with regard to an atypical NPI number have not been resolved yet.

RESPONSE #41: The funding for the 1915(i) is from federal Medicaid plus state general fund match. A rate-setting process was required for the 1915(i). This resulted in some unit procedure and rate changes. The department continues to work with Xerox (formerly ACS) to address persistent billing difficulties for atypical providers. Currently Xerox is working with the department on plans for an updated payment system.

COMMENT #42: A commenter asks about the process to report abuses of the system or inappropriate activities by service providers, including the hierarchy of the grievance process. Commenter also asks about what punitive measures will ensure a provider will not continue poor practice and is given opportunities to align practice with high fidelity wraparound.

RESPONSE #42: Abuses of the system (such as financial abuses) can be reported to the audit and compliance bureau of the quality assurance division of the department. These can also be reported to a supervisor at children's mental health bureau (CMHB). Inappropriate activities by service providers should be addressed directly with that provider, then the provider's supervisor, then with the regional manager, then the CMHB supervisor, finally with the CMHB bureau chief if there has been no resolution.

COMMENT #43: A commenter expressed concern about the nonmedical transportation service because families are supposed to be focused on natural

supports and an agency is required to provide the service but in some cases cannot afford to provide it. The commenter requests an example when this service would apply.

RESPONSE #43: Please refer to the description of the service in the policy manual. This service is used when there is not another resource to transport a youth to nonmedical activities included in the service plan.

COMMENT #44: A commenter noted a few concerns about the service of respite care, including the suggestion that providers could bill for training and developing specialized skills for respite providers and not be required to employ respite providers.

RESPONSE #44: The department appreciates the suggestion but will continue to require that respite providers be employed by an agency that assures they are qualified to provide care.

COMMENT #45: A commenter asked for information about outcomes from the psychiatric residential treatment facility waiver. The commenter also inquired about the paradox of requiring families to participate in the PRTF waiver and now the 1915(i), with respect to the issue of family choice. The commenter wanted to know whether CMHB adequately researched statewide the service models already available before implementing the PRTF waiver and what CMHB's stance is in regard to models of service outside the current PRTF waiver being able to meet the needs of and appropriately serve youth currently enrolled in the PRTF waiver, if the proposed rule changes do not go through.

RESPONSE #45: Families have free choice of providers and services. There is no requirement to participate in 1915(i) services. The department considers the additional items in the comment to be outside of the scope of the proposed rule changes.

The Centers for Medicare and Medicaid requested the following items be changed in the department's application for the 1915(i) in order for it to be approved. In response, the department made the changes to the state plan application (SPA) and the 1915(i) HCBS State Plan Program for Youth with Serious Emotional Disturbance Policy Manual dated January 1, 2013 incorporated by reference in New Rule I, 1915(i) Home and Community Based Services (HCBS) State Plan Program for Youth with Serious Emotional Disturbance: Federal Authorization and Authority of State to Administer Program as follows:

(1) In the needs-based eligibility criteria, items f and g, needed to be removed as these do not demonstrate criteria that would be less stringent than institutional criteria. These items were:

(f) the youth is/was enrolled in the 1915(c) HCBS PRTF Waiver; and

(g) the youth meets PRTF level of care admission criteria but the youth and family choose to remain in the community and receive 1915(i) HCBS state plan services; the youth is at risk for PRTF placement.

(2) The minimum criteria for evaluation and re-evaluation must be the same and the state needed to remove the existing re-evaluation criteria from the application and clarify that the criteria are the same for evaluation and for re-evaluation.

(3) The service customized goods and services could not be offered by the state unless it offers self-direction through the budget authority. CMS indicated the state could propose a different service that includes the specific items or categories of items that could be covered and include that the service not be open-ended.

(4) The state must define and ensure that respite services:

(a) may only be used on a temporary and intermittent basis;

(b) that the service be defined as for the needs of the youth rather than for the needs of the caregiver's;

(c) that respite cannot be billed at the same time as crisis intervention service; and

(d) that room and board are not included in respite services.

(5) The state needed to describe how crisis intervention service;

(a) differs from respite services;

(b) will not be used or billed at the same time as respite services;

(c) note that room and board are not included;

(d) ensure that the service is only used on a temporary and intermittent basis and;

(e) indicate how many consecutive stays are allowed.

(6) The state was directed to clarify conflict of interest safeguards regarding wraparound facilitators who are employed by agencies that provide other HCBS services and to clarify that the family, not the provider, should always be the one choosing providers.

(7) In order to comply with conflict of interest requirements under 1915(i), the state needed to demonstrate in its SPA that there is an independent evaluation of eligibility, an independent assessment and an individual service plan conducted by an entity that does not have a financial interest in providers of HCBS.

(8) The state was directed to remove specific language in the SPA under Specialized Evaluation Services regarding evaluation and associated costs of youth under consideration for enrollment in the 1915(i) HCBS state plan program prior to the youth being referred to the UR organization for the needs-based criteria review.

(9) The state needed to remove the following items from the SPA's target group criteria as the items are captured elsewhere in the SPA and do not fit within the permissible parameters for target group criteria (age, disability, diagnosis and/or Medicaid eligibility):

(a) Families/caregivers willing to participate in the high fidelity wraparound process;

(b) Living in the community with family, licensed foster home or legal representative;

(c) Concurrently not an inpatient in the local hospital or a PRTF facility; and

(d) Have needs that may be adequately met by 1915(i) HCBS state plan services.

(10) The state needed to confirm the proposed effective date of the SPA as it was not approved for the original effective date of October 1, 2012.

5. The department intends to apply these rules retroactively to January 1, 2013. 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/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State January 22, 2013.

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 III, the amendment of) AMENDMENT, AND REPEAL
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)

TO: All Concerned Persons

1. On October 11, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-607 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1983 of the 2012 Montana Administrative Register, Issue Number 19.

2. The department has adopted New Rule I (37.34.1105) and III (37.34.1119) as proposed.

3. The department has amended ARM 37.34.1101, 37.34.1102, and 37.34.1108 as proposed.

4. The department has repealed ARM 37.34.1109 and 37.34.1115 as proposed.

5. The department has adopted the following rule as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

NEW RULE II (37.34.1117) PLAN OF CARE: INDIVIDUAL FAMILY SERVICE PLAN: PURPOSE (1) An individual family service plan (IFSP) must be adopted for children through ~~46~~ 15 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

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

37.34.1103 PLAN OF CARE: PERSONAL SUPPORT PLAN:

COMPONENTS (1) Each personal support plan (PSP) must include the following:

(a) 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.

(b) 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) Action statements that define how the person will achieve the outcomes described in (b).

~~(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 PSP may include an action plan developed by the provider responsible for completing the specific action. If an action plan is required, the provider must:~~

~~(a) self-administration of medication~~ develop the action plan in accordance with department policy;

~~(b) supported employment~~ describe the training and support the person needs to achieve the action statements required in (1)(c); and

~~(c) rights restrictions; or~~ provide the action plan to the case manager within 14 days after the PSP meeting.

~~(d) positive behavior supports approved according to ARM Title 37, chapter 34, subchapter 14.~~

(3) A PSP must include an action plan developed by the provider 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.

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 PLAN OF CARE: PERSONAL SUPPORT PLAN: PLAN TEAM

(1) The personal support plan (PSP) team must include the following persons:

(a) the person with a developmental disability, if able to participate;

(b) the advocate of the person, if applicable;

(c) the legal representative of the person, if applicable;

(d) the PSP certified case manager of the person;

(e) a staff person from each service program; and

(f) other persons(s) who are approved by the person.

(2) If the person or a legal representative is unable to participate in the PSP meeting, the case manager must document the reasons for the absence and subsequently submit the plan of care to the person or legal representative for their review. The person or their legal representative may request that the team meet to consider any objections that they may have.

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 PLAN OF CARE: PERSONAL SUPPORT PLAN: DECISION MAKING (1) 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) All decisions of the PSP team must be made in consensus.

(3) If consensus cannot be reached, the person(s) who does not consent may submit their disagreement along with the justification for their disagreement within five working days to the regional manager. The regional manager must:

(a) make a determination within five working days; and

(b) provide the determination in writing to the members of the PSP team.

(4) The person receiving service maintains the right to request an administrative fair hearing.

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

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

New Rule II (37.34.1117)

The department is taking this opportunity to clarify the language in New Rule II (37.34.1117). The wording should have either read "to 16 years of age" or "through 15 years". The department has changed it to correctly state "through 15 years".

COMMENT #1: Multiple commenters stated their concern relating to the lack of an appeals process in the proposed rules.

RESPONSE #1: The department appreciates the commenters' concern and intends to review the administrative rules pertaining to developmental disabilities services and through a future rule notice procedure, will propose necessary changes to

clearly establish the scope and nature of the right to a fair hearing for plan of care appeals. In accordance with federal requirements, the right to a fair hearing for a person receiving services will remain available.

COMMENT #2: One commenter stated concern that the proposed rules are less person-driven than the current rule. The commenter stated that the proposed rules do not address the person's individual rights, do not address if a person's consent is required prior to implementation, and removes the administrative appeal process.

RESPONSE #2: The department does not agree that the proposed rules are less person-driven than the current rules. The person's participation in the planning process is required, if they are able to participate, and the plan of care team must base all decisions on the person's rights, needs, visions, preferences, health and safety needs, and financial allocation as described in the proposed ARM 37.34.1114. The person's right for due process remains available.

COMMENT #3: One commenter requested the consent of the person or the person's legal representative be required to implement a plan of care.

RESPONSE #3: Adoption and implementation of a plan of care may proceed without the consent of the person or the person's legal representative. However, the person or the person's legal representative has the right to an administrative fair hearing appeal if there is disagreement with the final determination of the regional manager to proceed with the plan of care. If the person wishes to receive services from another provider, the person may follow the porting policy to obtain a placement. In addition, a person or their legal representative may make a decision for the person to withdraw from services.

COMMENT #4: One commenter requested that the word "that" be removed from ARM 37.34.1103(1)(c).

RESPONSE #4: The department does not agree with the requested change as the intent is not a definition rule. This proposed rule contains a list of components of a personal support plan, each of which has specific requirements.

COMMENT #5: One commenter stated they would like the department to add a definition section to ARM 37.34.1103(1), defining an action plan.

RESPONSE #5: The department will add further clarifying language to ARM 37.34.1103(2) which addresses the action plan to further describe the requirements.

COMMENT #6: One commenter suggested adding language to ARM 37.34.1107(2) for the case manager to submit the personal support plan to the person or the person's legal representative in the event they could not attend the plan of care meeting, in order to acquire consent.

RESPONSE #6: The department has reviewed the rule and will add language for the case manager to submit the personal support plan to the person or the person's legal representative in the event they could not attend the team meeting to allow for their review and to provide that they may request the team meet if there are objections.

COMMENT #7: One commenter requested that the department add a definition for legal representative.

RESPONSE #7: The department agrees with the commenter and intends to at a future date, add a definition of legal representative; however, since that terminology is used in all of our rules, we will not define it here, rather we intend to define it for the entire chapter of rules.

8. These rule amendments are effective upon publication.

/s/ Cary B. Lund
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State January 22, 2013

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 37.34.1501 and the repeal of) REPEAL
37.34.1502, 37.34.1506, 37.34.1507,)
37.34.1511, 37.34.1512, and)
37.34.1513 pertaining to incident)
reporting)

TO: All Concerned Persons

1. On October 11, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-608 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1994 of the 2012 Montana Administrative Register, Issue Number 19.

2. The department has repealed ARM 37.34.1502, 37.34.1506, 37.34.1507, 37.34.1511, 37.34.1512, and 37.34.1513 as proposed.

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

37.34.1501 INCIDENT REPORTING AND HANDLING, PURPOSE

(1) remains as proposed.

(a) The Developmental Disabilities Program Incident Management Procedures Manual, dated ~~August 8, 2012~~ February 1, 2013, sets forth further requirements and criteria that govern the incident management system for the developmental disabilities program of the department.

(b) The department ~~hereby~~ adopts and incorporates by reference the Developmental Disabilities Program Incident Management Procedures Manual, dated ~~August 8, 2012~~ February 1, 2013.

(c) and (d) remain as proposed.

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

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

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

All comments received pertain to the Developmental Disabilities Program Incident Management Procedures Manual (hereafter referred to as the "manual"), dated February 1, 2013. The effective date of the manual was changed from August 8, 2012 due to comments made to this rule and to coincide with the publication date of

this MAR notice. The manual with the added changes may be viewed at the following web site: <http://www.dphhs.mt.gov/dsd/admnrules.shtml>.

COMMENT #1: One commenter stated that the definition of abuse includes "the infliction of physical or mental injury," but on page 6 of the manual there are separate categories for physical injury and mental injury. Does this not serve to confuse people?

RESPONSE #1: The department does not agree with this comment. Abuse is a cause of physical and mental injury. The data management system prompts the question of abuse as a cause of the physical or mental injury.

COMMENT #2: A commenter asked why not use the "other" event section in "Therap" and enter in physical abuse. They stated that when reports are run on "Therap," these incidents will show as injury and not abuse, which makes it harder to pick out which clients should be reviewed during high risk.

RESPONSE #2: The department is removing the choice of "other" as it skews the data based on inconsistent use of language and misspellings. The department also wants providers to report on causes.

COMMENT #3: One commenter asked if self-neglect on page 6 of the manual should have a Montana Code Annotated (MCA) definition as the other categories do and asked if self-injurious behavior that results in injury constitute self-neglect.

RESPONSE #3: There is currently no definition for self-neglect in MCA. The department has changed the language of this definition to make it less confusing to the reader.

COMMENT #4: One commenter asked if "civil-rights violation" on page 7 of the manual should have a bolded heading and MCA as the other categories do. In addition, this commenter asked for specification of what is a civil-rights violation.

RESPONSE #4: Civil rights encompass both federal and state laws establishing certain rights or prohibiting certain types of discrimination. The rule and manual cannot comprehensively provide a listing of all possible applicable laws. It is expected that those persons involved in the reporting and review of incidents will have common knowledge of actions that may constitute violations and will proceed to report those possible incidents. The Developmental Disabilities (DD) Program in carrying out the administration of the incident report system can obtain further advice as to the nature of such incidents for the purpose of further processing them.

COMMENT #5: One commenter stated that "reportable injuries" under the incident definitions section is very vague and that doctors do a lot more than first aid. The commenter also states that the definition for "critical" is only if they are admitted to a hospital which leaves everything else as reportable.

RESPONSE #5: The department reviewed this comment and will keep the language that events classified with a severity of reportable injuries are those that require treatment of staff or medical personnel; however, the department will remove the examples in the proposed language of the manual to avoid the confusion expressed by this commenter.

The intent of the critical events language is to encompass emergency room treatment or a physician treatment that results in a hospital admission or any injury from suspected abuse and neglect.

COMMENT #6: One commenter asked about the medication error section on page 9 of the manual, asking what do with medication if it is dropped on the floor.

RESPONSE #6: The department will add a section to the "other" category and include medications that are located or found in a place not specifically indicated for medicine storage.

COMMENT #7: One commenter asked about the section of the manual on page 11, "restraints other." This commenter requested we supply examples rather than refer to the Administrative Rules of Montana (ARM) that address restraints.

RESPONSE #7: The department will leave the reference to the ARM which address restraints. Though this requires an additional resource, it ensures that the rules remain consistent and are not repetitive.

COMMENT #8: One commenter asked if catching someone when they are falling to prevent them from falling or assist them to the floor is considered a restraint.

RESPONSE #8: Physical restraint is restricting a person's movement by holding or applying physical pressure to bring the person's behavior under control in order to avoid the risk of serious harm to the person, other person(s), or the environment. Further information regarding restraints can be found in ARM Title 37, chapter 34, subchapter 14. If the incident results in an injury, it must be reported as an injury.

COMMENT #9: One commenter questioned "Other incidents as listed in the data management system" section on page 12, if someone is attacked by a staff member or member of the community, why it isn't considered physical abuse. They suggest the "other" category be selected in "Therap" and then type in physical abuse.

RESPONSE #9: The department agrees, in part, with the commenter that it is physical abuse but will keep this listed under assault. Physical abuse is not an event; it is the result of an event, which in this situation is the assault. This will help keep the data cleaner.

COMMENT #10: One commenter asked if a person is considered "AWOL/missing" if the person's whereabouts is unknown and it is not due to suspected abuse, neglect, or exploitation.

RESPONSE #10: In addition to suspected abuse, neglect, or exploitation, the definition of "AWOL/Missing" person also states if a person whose whereabouts is unknown and whose supervision needs, or pattern of behavior, is cause for concern for reasons of safety and wellbeing, the person would be considered "AWOL/Missing." The department reviewed this section and has changed the wording to make the department's intent more evident.

COMMENT #11: One commenter would like to know why the behavioral issue option is not available to use as a category for an incident. They state that it is a highly used category by staff.

RESPONSE #11: The department determined that the general event record is not meant to record behavioral data, unless the behavior leads to an incident, which would then be recorded as the incident for the purpose of this policy.

COMMENT #12: One commenter asked why events identified in "Therap" that are not approved for use are not removed from the drop down list. The commenter stated that if they are available on the list then staff will use them.

RESPONSE #12: The department is an end user of the "Therap" system and therefore cannot make the modifications requested. The department will provide training on this manual and it is the responsibility of the incident management coordinators to ensure proper coding in compliance with this policy.

COMMENT #13: One commenter asked if law enforcement involvement would include motor vehicle accidents.

RESPONSE #13: The department has reviewed this comment and the definition of "law enforcement" on page 13 of the manual and has decided to remove the list of examples from the manual since it is not all inclusive and might cause confusion. The definition of law enforcement involvement is any incident involving a person where law enforcement has been contacted; therefore, if the motor vehicle accident results in law enforcement involvement, then yes, it is included.

COMMENT #14: One commenter requested to use the event of "hospital without admission" for an unscheduled medical issue rather than serious illness as that is the way it has been done in the past and the commenter would like to know why it must change.

RESPONSE #14: The feedback the department received prior to this manual update from users was that using "hospital without admission" was unclear.

COMMENT #15: One commenter asked if the P.R.N. protocol must be signed by the doctor or is the presence of a script sufficient.

RESPONSE #15: The protocol must be signed by the physician; the department added the language in the manual to specify this requirement.

COMMENT #16: One commenter asked when there is law enforcement involvement if the incident management coordinators interview witnesses.

RESPONSE #16: When law enforcement is involved, they direct the process regarding interviewing witnesses. Providers must also follow the procedures provided in the investigator's manual.

COMMENT #17: One commenter asked if it should be an agency decision removing an employee, who is an alleged perpetrator, from contact during an investigation.

RESPONSE #17: The department disagrees with this comment. This is one of the performance measures required for a federal program and is not a change from past department policies.

COMMENT #18: One commenter expressed concern about the requirement to supply a copy of the administrative review (AR) to the person or legal representative. They stated they are concerned about the confidentiality of the document and that others working in the home may have access to the material contained in the document. The commenter would like a requirement to "sanitize" the document. The commenter also questioned an appeal process in the event the person or legal representatives disagree with the outcome of the AR.

RESPONSE #18: The department has considered the comment and has determined that the redaction of certain information must occur before release of the report to the person or their legal representative. While a report may contain reference to the information concerning the incident received from other residents or persons receiving services, personal information about health status and other personal matters of those other residents or persons receiving services that may appear in a report must also be redacted. In addition, employment related actions taken by a provider in relation to an employee who is alleged to be responsible for the harm to the person must also be redacted from a report.

COMMENT #19: One commenter asked why the "trends" information is only provided to the case management supervisor rather than all case managers.

RESPONSE #19: The department reviewed the process and determined that all case managers do not need all "trends" information; therefore, the case management supervisor can determine who needs the information and provide it to the appropriate case managers.

COMMENT #20: One commenter stated that the requirement for the incident management coordinator to be responsible for calling team meetings to discuss patterns or trends of incidents should be the responsibility of the team. Alternatively,

the incident management committee makes recommendations that are not already addressed by the team.

RESPONSE #20: The department determined it is important to have one person responsible for monitoring trends and calling meetings when appropriate. By assigning the responsibility of this to one person, it provides a safeguard to assure it happens.

COMMENT #21: One commenter stated that listing the shifts in which injuries and other incidents occur isn't necessary because the time is already entered.

RESPONSE #21: The department has reviewed this comment and will remove the reference to the shift and leave time of incident as the sole requirement.

COMMENT #22: One commenter asked why there is a requirement for the incident management committee to determine who to do a high-risk review (HRR) on. The commenter stated it is a waste of time for the incident management coordinator to pull this information and bring it to the committee when they could determine who meets the criteria and schedule the review.

RESPONSE #22: The department agrees that there is a clear cut criterion for when a high-risk review is needed. Therefore, the department will amend the language in the manual to reflect that the incident management coordinator will bring only those that do not clearly meet the criteria to the incident management committee. However, the committee also has the discretion to recommend an HRR when someone doesn't meet the criteria and it is valuable to get a wide range of input in a team environment rather than having one person make that determination independently.

COMMENT #23: A commenter asked if the "triage report and process" should be added to Appendix A and requested the term "if applicable" be added regarding the investigator arriving at the scene.

RESPONSE #23: Appendix A lists the stages to conducting a full investigation; therefore, triage is not a part of this process and is located in a separate section of the manual. As Appendix A refers to full investigations, it will always be applicable and required for the investigator to arrive at the scene.

COMMENT #24: One commenter asked what is "reconciliation of evidence."

RESPONSE #24: The act of reconciling something is to resolve the issue at hand and to check it for accuracy. Beginning on page 30, stage 3, in the incident management procedures manual there is a list of the core rules (guidelines) associated with reconciliation of evidence provided to assist with the process.

COMMENT #25: One commenter asked if in Appendix B, other staff involved should be identified by name or initials in the general event report.

RESPONSE #25: Yes, other staff involved in an incident should be identified by name. The department added clarifying language to this section.

COMMENT #26: One commenter stated that on page 38 of the procedure manual it would be good to have column headings on the top of each page of the appendix.

RESPONSE #26: The department agrees with this suggestion and will add column headings at the top of each page.

COMMENT #27: One commenter asked if the quality improvement specialist (QIS) should be notified of law enforcement involvement, med errors, and other reportable and all internal incidents.

RESPONSE #27: Per the chart in Appendix C, the QIS is still notified in the above referenced events via the incident reports in the data management system. It is not a telephonic notification.

COMMENT #28: One commenter had multiple concerns about the two charts in Appendix D.

RESPONSE #28: The department has reviewed appendix D and had determined to remove it from the manual. Appendix D was intended to be a tool for providers to use and the information found in the manual is available in the manual.

COMMENT #29: One commenter had multiple comments regarding the final investigation report form as follows:

- a) there is not a place for case number on the final investigation report form and only one space for provider notification;
- b) does the question regarding injuries resulting in hospitalization also include those that result in medical treatment;
- c) requested page numbers for the report;
- d) should the "investigator recommendations/provider agency follow-up actions" actually be committee recommendations; and
- e) stated there is no space for the investigator to sign.

RESPONSE #29: The department responds as follows:

- a) The department removed the place for case number because the person's name is now referenced.
- b) Injuries resulting in hospitalization do not include those that result in medical treatment.
- c) Page numbers will be placed in the documents when the electronic versions are posted, the department did not add them for the purpose of this notification.
- d) The form is correct as proposed; the provider is responsible for the investigation and the recommendations as a result of the investigation. The committee may have input on the provider recommendations through the incident management review process.

e) The department will add a signature line for those forms filled out manually; however, the department expects the majority of the forms will be electronic.

COMMENT #30: One commenter asked if there is a place on the form for committee recommendations, how providers will know what actions were taken based on the investigations, and why there is not more room for signatures on the administrative review so that the agency, the QIS, and the case managers can all sign in agreement.

RESPONSE #30: The forms attached to this document will be available in electronic formats; the boxes expand as they are filled in allowing for room to make the committee recommendations. In the new policy, the administrative review form is completed by the agency's administration or the regional manager, depending on who completed the investigation. The committee will monitor and follow up on the recommendation at the committee meetings to ensure they are implemented. The person filling out the form is the only signature required on the new form.

COMMENT #31: One commenter asked why there isn't a place for case numbers on the triage form and why is there only one place for signature.

RESPONSE #31: The department removed the place for case number because the person's name is now referenced. The director or the coordinator is the only signature required on the new form.

COMMENT #32: One commenter asked why there is not a signature block on the witness form.

RESPONSE #32: The witness must sign directly under their completed statement to prevent additional statements from being added after the witness has signed the document.

/s/ Cary B. Lund
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State January 22, 2013.

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 37.112.103, 37.112.108,)
37.112.109, 37.112.116, 37.112.117,)
37.112.131, 37.112.133, 37.112.137,)
37.112.142, 37.112.144, 37.112.147,)
37.112.158, 37.112.159, and)
37.112.167 pertaining to body art and)
cosmetics)

TO: All Concerned Persons

1. On November 8, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-615 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2264 of the 2012 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 37.112.108, 37.112.116, 37.112.137, 37.112.142, 37.112.144, 37.112.158, 37.112.159, and 37.112.167 as proposed.

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

37.112.103 DEFINITIONS (1) through (7) remain as proposed.

(8) "Cleaning room" means the room used to sterilize instruments and jewelry with an autoclave.

(8) through (14) remain as proposed, but are renumbered (9) through (15).

~~(15) (16) "Implant" means an artificial object inserted into a person's body. Implants do not include microdermal anchors or two-point piercings.~~ means any transdermal or subdermal object that is embedded into a person's body. Implants do not include microdermal anchors or two-point piercings.

(16) through (29) remain as proposed, but are renumbered (17) through (30).

(31) "Subdermal object" means an item that is being, living, used, or made under the skin.

(30) through (33) remain as proposed, but are renumbered (32) through (35).

(36) "Transdermal object" means an item that is passed, entered, or made by penetration through the skin. Transdermal objects do not include microdermal anchors.

(34) through (36) remain as proposed, but are renumbered (37) through (39).

AUTH: 50-48-103, MCA

IMP: 50-48-102, 50-48-103, MCA

37.112.109 WATER SUPPLY (1) remains as proposed.

(2) A nonpublic water supply system must meet the requirements of Food and Consumer Safety (FCS) Circular 1-2012 when:

(a) the water supply is constructed after the effective date of this rule;

(b) modifications are made to the water system; or

(c) the local health authority determines compliance with FCS Circular 1-2012 is necessary to meet the requirements of this subchapter.

(2) through (9) remain as proposed, but are renumbered (3) through (10).

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.117 WORK ROOM REQUIREMENTS (1) through (7) remain as proposed.

(8) The work rooms must have a handwashing facility unless there is a handwashing facility outside the work room within ten feet of the work room door.

(a) remains as proposed.

(b) The handwashing ~~station~~ facility cannot be in the same room as the toilet.

(c) through (12) remain as proposed.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.131 STERILIZATION OF EQUIPMENT AND JEWELRY (1) and (2) remain as proposed.

(3) Whenever an autoclave is used, the following requirements apply:

(a) through (c) remain as proposed.

(d) Monthly biological monitoring must be conducted on the autoclave using standard spore units that are analyzed by a certified laboratory. The results of the ~~testing must be provided to the health authority on a monthly basis and the monthly spore test must be posted in a conspicuous place.~~

(e) The department or its designee may require that an operator submit the results of a monthly spore test directly to its office if the establishment fails to perform a monthly spore test or has one or more failed spore tests.

(e) and (f) remain as proposed, but are renumbered (f) and (g).

(4) remains as proposed.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.133 SKIN PREPARATION, ASEPTIC TECHNIQUE, AND AFTERCARE (1) and (2) remain as proposed.

(3) Before and after performing the tattooing or body piercing procedure, artists must remove all rings and then thoroughly wash their hands, wrists, and lower arms in warm running water with soap for at least 20 seconds, scrubbing around and under their fingernails, rinsing completely, and drying with clean, individual, disposable towels.

(4) Artists must wear a clean outer garment. A hair restraint must be worn if necessary to prevent the artist's hair from contact with the client. All necklaces, bracelets, or other personal items of the artist either must be removed or covered by the outer garment ~~or sterile gloves~~ to prevent the item coming in contact with the client.

(5) remains as proposed.

(6) If the artist wore gloves to wash or shave the client's skin, the artist must discard those gloves after completing those tasks. The artist must then remove gloves, wash hands, and put on a new pair of gloves before continuing the procedure.

(7) remains as proposed.

(8) If it is necessary to use a marking device, ~~the tip of the marking device must be vigorously wiped with 70% alcohol or other approved disinfectant before and after use, or used only once~~ the marking device will be used only once and disposed of or it must be autoclaved between uses.

(9) remains as proposed.

(10) If the artist's gloved hands become contaminated during the tattooing or body piercing procedure, then the artist must remove gloves, wash hands, and put on a new pair of gloves ~~rewash hands and reglove~~ before resuming the procedure.

(a) through (11) remain as proposed.

(12) Upon completion of the tattooing or piercing procedure, artists must apply an antiseptic solution to the procedure area with a clean single-use cotton ball, gauze, or tissue. In the case of a tattoo, the artist must then apply a sterile absorbent bandage to the tattooed site.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

37.112.147 TRAINING (1) Operators and artists must complete formal training ~~provided by the department or its designee that includes in~~ at least general sanitation, first aid, and universal precautions for preventing the transmission of blood-borne pathogens before licensure. Training may be provided by the department, its designee, or an organization approved by the department or its designee as having adequate content in each subject.

(2) remains as proposed.

(3) Guest artists and new artists must complete formal training and provide the inspecting authority with documentation of this training prior to working in a licensed facility. ~~Guest artists must also provide documentation of experience to the body art health authority in the jurisdiction they wish to work.~~

(4) and (5) remain as proposed.

AUTH: 50-48-103, MCA

IMP: 50-48-103, MCA

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

COMMENT #1: One commenter stated that the definition of body modification is "ambiguous" and asked if it includes "altering hair, bodybuilding, dieting, etc.."

RESPONSE #1: The department agrees that the practices of altering hair, body building, and dieting would be considered body modification under this definition. Due to the explicitness of the way the term is used in the rule the department does not think it will result in confusion, because tattooing, body piercing, and ear lobe piercing are clearly defined and the restricted forms of body modification are explicitly outlined.

COMMENT #2: One commenter asked for clarification as to what the reasoning was for the 8mm length characteristic in the definition of transdermal and microdermal anchors.

RESPONSE #2: Research by the department at the time of rule writing found that 8mm includes all of the jewelry marketed as microdermal anchors while distinguishing microdermal anchors from larger transdermal anchors.

COMMENT #3: One commenter requested that the department clarify the reason for omitting the use of self-closing doors on bathrooms.

RESPONSE #3: Research by the department could not find that installing self-closing doors increased the safety of artists or their clients. As a result, the requirement was removed.

COMMENT #4: A number of commenters stated that the changes to ARM 37.112.131(2)(d) would result in either an undue burden being placed on licensed body art establishments or an increase in workload to local health departments that they would not be able to meet.

RESPONSE #4: The department agrees with the commenters. The department has reworded (2)(d) so that submission of spore test results to the department or its designee can be an optional requirement determined by the department or its designee based on whether an establishment fails to perform the necessary monthly autoclave spore tests or has one or more failed spore tests as determined during regular inspections.

COMMENT #5: A number of commenters suggested that in ARM 37.112.147(1) training may be appropriately provided by options other than the department or its designee.

RESPONSE #5: The department agrees there are a number of training options available to artists. It is unnecessary for the department or its designee to provide first aid and blood borne pathogen prevention training and this will be reworded by the department.

COMMENT #6: A number of commenters thought that "documentation of experience" in ARM 37.112.147(3) was vague or not under the purview of the health authority.

RESPONSE #6: The department agrees with the commenters and will remove this requirement from the rule.

COMMENT #7: One commenter said that the definition for the term implant in ARM 37.112.103 is too broad and that it contradicts itself.

RESPONSE #7: The department agrees with the commenter and has changed the definition of implant.

COMMENT #8: Two commenters did not like the changes to ARM 37.112.133(8). One commenter felt that the use of the term "vigorous" was too subjective to be in rule. The other commenter felt that the procedure to use 70% alcohol to clean a marking device is not adequate to prevent the spread of pathogens between clients.

RESPONSE #8: The department agrees with the second commenter and will remove this procedure from the rule.

COMMENT #9: A commenter found ARM 37.112.147(2) to be too wordy.

RESPONSE #9: The department disagrees with this assessment and will leave (2) as written.

COMMENT #10: A commenter requested that the term "cleaning room" be defined.

RESPONSE #10: The department agrees that this term needs to be defined. The department has added the definition.

COMMENT #11: A commenter has requested that the department adopt the Food and Consumer Safety (FCS) Circular 1 and add it to the current water supply section in ARM 37.112.109.

RESPONSE #11: The department agrees and has incorporated FCS Circular 1 into the rule.

COMMENT #12: A commenter requested that the wording in ARM 37.112.117(8)(b) be changed from "handwashing station" to "handwashing facility" so that terms are used consistently throughout the rule.

RESPONSE #12: The department agrees and has changed the term.

COMMENT #13: A commenter requested language be added to ARM 37.112.133 to explicitly state that equipment be changed out between clients.

RESPONSE #13: The department disagrees. In ARM 37.112.131(1) it is required that all nondisposable instruments be autoclaved and individually wrapped. In ARM 37.112.131(4) it states that sterile packages must be opened in full view of the client. In practice this means that an artist must change out equipment between clients.

COMMENT #14: A commenter has requested that the rule explicitly state in ARM 37.112.133(4) that rings be removed during the hand washing procedure.

RESPONSE #14: The department agrees and will make this change to the rule.

COMMENT #15: A commenter requested the department remove the word "sterile" to describe gloves in ARM 37.112.133(4).

RESPONSE #15: The department agrees and will make this change to the rule.

COMMENT #16: A commenter requested that the second sentence in ARM 37.112.133(6) be changed from "The artist shall then put on a new pair of gloves before continuing the procedure" to "The artist must then remove gloves, wash hands, and put on a new pair of gloves before continuing the procedure." Similar language regarding glove removal and hand washing was requested to be added to ARM 37.112.133(10).

RESPONSE #16: The department agrees and will make this change to the rule.

COMMENT #17: A commenter requested that the department require all artists to undergo drug testing in order to operate legally in Montana.

RESPONSE #17: The department does not have the authority to require drug testing of artists.

COMMENT #18: A commenter requested that the department add a requirement in ARM 37.112.133(12) to require absorbent sterile bandages be applied after antiseptic ointment is applied to a new tattoo.

RESPONSE #18: The department agrees and will add this language to the rule.

COMMENT #19: A commenter requested that ARM 37.112.137 be rewritten so that the meaning of infectious waste is more clear to both inspectors and operators.

RESPONSE #19: Infectious waste is defined in 75-10-1003, MCA with clarification from the Department of Environmental Quality. The department will provide DEQ's clarification through our web site and plan review application.

COMMENT #20: A commenter has requested that the wording "or designee" be added after the word "department" in ARM 37.112.159(1).

RESPONSE #20: The department disagrees that the word designee be added to the rule because 50-48-203, MCA allows local jurisdictions to write their own body art rules and conduct their own licensing. A local jurisdiction has the authority to do this and in so doing grant their own variances. When the department is responsible for the licensing of an establishment the department must also be responsible for approving variances to that license.

COMMENT #21: A commenter requested that ARM 37.112.163(5) and (6) be moved to ARM 37.112.133 so that tattooing process requirements are located together.

RESPONSE #21: The department agrees with this recommendation, however changes were not proposed to ARM 37.112.163 during the revision so the department cannot make changes to it during the comment period.

COMMENT #22: A commenter has requested that the department specifically prohibit the use of dermal punches in piercing procedures.

RESPONSE #22: Regulating the use of medical instruments is outside the authority of this rule.

COMMENT #23: A commenter has requested that restrictions of the use of single-use presterilized ear piercing equipment to the outer edge of the ear be removed in ARM 37.112.103(11) and ARM 37.112.167(1).

RESPONSE #23: These sections of the rule make no such restriction.

COMMENT #24: A commenter has requested that the department incorporate a skills test into the licensure requirements of the body art rule.

RESPONSE #24: The department is not qualified to determine the skill of licensees. The department can only make a determination on an individual's use of techniques that limit the spread of pathogens between individuals or cause infection in the individual receiving the work.

COMMENT #25: A commenter has requested that inspectors be required to receive training in body art before doing inspections.

RESPONSE #25: This comment is not pertinent to the current rule revision but the department will take this comment under advisement.

COMMENT #26: A commenter has requested that the department make the public more aware that they can make complaints about artists to the department or its designee.

RESPONSE #26: This comment is not pertinent to the current rule revision but the department will take this comment under advisement.

COMMENT #27: A commenter has requested wording be added to the rule that restricts the sale of tattooing equipment to individuals working outside of a licensed establishment.

RESPONSE #27: Restricting the sale of tattooing equipment is not within the department's authority.

/s/ Shannon L. McDonald
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State January 22, 2013

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 37.87.901 and 37.87.903)
pertaining to the children's mental)
health utilization review manual and)
fee schedule)

TO: All Concerned Persons

1. On December 6, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-617 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2431 of the 2012 Montana Administrative Register, Issue Number 23.

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

3. No comments or testimony were received.

4. The department intends to apply these rule amendments retroactively to January 31, 2013. A retroactive application of the rule amendments does not result in a negative impact to any affected party.

/s/ John Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State January 22, 2013.

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

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 37.34.101, 37.34.102,	)	REPEAL
37.34.105, 37.34.108, and 37.34.109)	
and the repeal of ARM 37.34.1601,)	
37.34.1701, 37.34.1801, and)	
37.34.1802 pertaining to the)	
developmental disabilities program,)	
regional councils, and accreditation)	

TO: All Concerned Persons

1. On December 6, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-618 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 2435 of the 2012 Montana Administrative Register, Issue Number 23.

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

3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State January 22, 2013.

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 X, the amendment of ARM 37.87.703, and the repeal of ARM 37.37.301, 37.37.303, 37.37.310, 37.37.311, 37.37.316, 37.37.318, 37.37.323, 37.37.330, 37.37.336, 37.87.1021, 37.87.1023, and 37.87.1025, pertaining to therapeutic family care and therapeutic foster care) NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On December 6, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-619 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2442 of the 2012 Montana Administrative Register, Issue Number 23.

2. The department has adopted New Rule II (37.87.1402), IV (37.87.1405), V (37.87.1407), VI (37.87.1408), VIII (37.87.701), and X (37.87.1413) as proposed.

3. The department has amended ARM 37.87.703 and repealed ARM 37.37.301, 37.37.303, 37.37.310, 37.37.311, 37.37.316, 37.37.318, 37.37.323, 37.37.330, 37.37.336, 37.87.1021, 37.87.1023, and 37.87.1025 as proposed.

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

NEW RULE I (37.87.1401) HOME SUPPORT SERVICES AND THERAPEUTIC FOSTER CARE, SERVICES REIMBURSEMENT (1) through (4) remain as proposed.

(5) Targeted case management will not be reimbursed concurrently with HSS or TFC.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, MCA

NEW RULE III (37.87.1404) HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), INDIVIDUALIZED TREATMENT PLAN (1) through (3) remain as proposed.

(4) The licensed person on each treatment team must coordinate sign the ITP of for each service with that of the other service(s) the youth, caregiver, or both are receiving receive.

(5) remains as proposed.

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

IMP: 53-2-201, 53-6-101, MCA

NEW RULE VII (37.87.1410) HOME SUPPORT SERVICES (HSS) AND THERAPEUTIC FOSTER CARE (TFC), PROVIDER REQUIREMENTS (1) Effective January 31, 2014. HSS and TFC providers must be a mental health center as described in Title 37, chapter 106, subchapter 19.

(2) through (8) remain as proposed.

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

IMP: 53-2-201, 53-6-101, MCA

NEW RULE IX (37.87.1411) THERAPEUTIC FOSTER CARE PERMANENCY SERVICES, AUTHORIZATION REQUIREMENTS AND COVERED SERVICES (1) through (5) remain as proposed.

(6) Medicaid will not reimburse for room, board, maintenance, or any other nontherapeutic component of TFOC-P treatment, including when this service is delivered in a foster home.

(7) Targeted case management will not be reimbursed concurrent with TFOC-P.

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

IMP: 53-2-201, 53-6-101, MCA

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

COMMENT #1: Several commenters expressed opposition to proposed New Rule I (37.87.1401)(5), that targeted youth case management (TCM) will not be reimbursed concurrently with home support services (HSS), therapeutic foster care (TFC), and therapeutic foster care permanency (TFOC-P). The commenters stated about 1,000 youth receiving HSS/TFC/TFOC are also receiving targeted case management and that the proposed rule changes impose more service expectations on the home support service specialist (HSS-S) to fill the gap when case management services are needed, diminishing the quality of the service. The commenters also stated that requiring case management as part of the bundled rate for HSS, TFC, and TFOC-P is an unfunded mandate.

RESPONSE #1: The intent of New Rule I (37.87.1401)(5) is to allow families and providers more flexibility in specific service responses, to match needs with interventions identified in the family's individualized treatment plan (ITP). Not all

families who receive HSS/TFC/TFOC-P will identify case management as a need. This flexibility allows providers to shift resources to provide services. The rule requires specific interventions be available under a single bundled rate which allows the family to identify and prioritize which interventions best meet their individualized needs.

COMMENT #2: Several commenters stated that youth transitioning to and from higher levels of care require TCM for successful transitions. The commenters requested the department to consider allowing for a time period in which case management services can be provided concurrent to HSS/TFC/TFOC-P to support these transitions.

RESPONSE #2: The department recognizes the merit of this request and may research the implications of allowing for this transition time in future rule amendments.

COMMENT #3: Many commenters stated that this rule change will deter targeted case managers from referring youth for HSS/TFC/TFOC-P because it will force the family to choose between two needed services. Many of the commenters identified themselves as family members currently receiving both services and said this rule change will force them to choose between two services they believe they need. They stated the proposed rule change is in contrast with the department's value of promoting voice and choice.

RESPONSE #3: The department supports asking the family to identify and prioritize their needs. The intent of this proposed rule is to allow for flexibility within an intensive in-home support model to match the family's needs. HSS/TFC/TFOC-P and TCM are not intended to be permanent services. If HSS/TFC/TFOC-P is effective, the family will get what they need through HSS/TFC/TFOC-P. If HSS/TFC/TFOC-P does not meet their needs they may choose another intervention more suited to meet their needs.

COMMENT #4: A few commenters stated that TCM is a program which meets the global needs of the family in the system and ensures a continuum of care as youth and family needs change within that continuum. They stated that the targeted case manager builds a longer relationship with the family than other providers and acts as an advocate for the youth and the family. Not allowing TCM concurrent with HSS/TFC/TFOC-P forces them to choose between two medically necessary services or lose a potential advocate during this service.

RESPONSE #4: The Children's Mental Health Bureau Provider Manual and Clinical Guidelines incorporated in ARM 37.87.903 defines the medical necessity criteria for admission and continued stay for TCM. Admission Criteria #1, 2(d) requires the TCM provider to demonstrate they are assisting in identifying resources and services necessary to complete an individualized, strength-based case management treatment plan directed at achieving self-sufficiency for the youth/family. TCM is not intended to be a long term service over multiple years. The goal is for families to

achieve self-efficacy. Families will have the choice between TCM and HSS/TFC/TFOC-P, based on a prioritization of their needs.

COMMENT #5: Many of the commenters do not think that TCM and HSS/TFC/TFOC-P are duplicative. Commenters say that HSS/TFC/TFOC-P is a direct, specialized in-home service designed to work with the whole family in the home setting to address the needs of the youth. In comparison, TCM cannot be a direct service and is designed to coordinate needed services. TCM, as defined in state and federal rule, is a process of planning and coordinating care and services to meet individualized needs of a client to assist the client in accessing necessary medical, social, nutritional, educational, and other services. The TCM links the youth and family to HSS/TFC/TFOC-P services when in-home family support is an identified need.

RESPONSE #5: The department agrees that federal law states TCM is not a direct service. Families can choose TCM when their priority is to have assistance accessing necessary medical, social, nutritional, educational, and other services. The HSS/TFC/TFOC-P provider is expected to assess the youth and family needs, develop, review, and monitor the plan of care as part of the service. Linkage and referral to other services may be identified by the family as a prioritized need over other services options within HSS/TFC/TFOC-P and addressed as part of this service.

COMMENT #6: One commenter referenced ARM 37.86.3305(2) saying that case management is a covered Medicaid service for severely emotionally disturbed (SED) youth and to deny TCM is denying access to a covered Medicaid service.

RESPONSE #6: ARM 37.85.410(1) states: "The department shall only make payment for those services which are medically necessary as determined by the department or by the designated review organization." A youth being determined as SED does not meet medical necessity requirements for TCM. The department's medical necessity criteria for TCM can be found at the following web site: <http://www.dphhs.mt.gov/publications/cmhbprovidermanualandclinicalmanagementguidelines.pdf>

COMMENT #7: Several commenters said families receiving HSS/TFC/TFOC-P have the greatest need for case management because they are at risk for out-of-home care. These commenters stated the case manager has a global view of the service system and makes referrals to the appropriate services to prevent out of home placements.

RESPONSE #7: HSS/TFC/TFOC-P is an effective, intensive intervention and the family will get what they need through HSS/TFC/TFOC-P or may return to TCM services.

COMMENT #8: One commenter stated that in ARM 37.86.3305(5), case management must be delivered by a case manager whose primary responsibility is

the delivery of case management services to one or more population(s) described in ARM 37.86.3305. If HSS/TFC/TFOC-P providers must deliver case management, the intent of this rule is contradicted.

RESPONSE #8: ARM 37.86.3305 applies to TCM. It does not apply to HSS/TFC/TFOC-P services as proposed.

COMMENT #9: A commenter said that in ARM 37.86.3305(3), the receipt of case management does not restrict a client's right to receive other Montana Medicaid services from any certified Medicaid provider. Proposed rule contradicts this rule.

RESPONSE #9: Most of the functions required of TCM are also expected from HSS/TFC/TFOC-P, raising sufficient concern that they are duplicative. The proposed rules will require families to choose if they want to receive care coordination through either TCM or HSS/TFC/TFOC-P.

COMMENT #10: One commenter opposed the proposed rule disallowing TCM to be reimbursed concurrent with HSS/TFC/TFOC-P because this rule will negatively impact children in foster care. The commenter stated targeted case managers have extensive and important information about foster children such as clinical and placement history. Department social workers are too busy with heavy caseloads or are too new to have a similar level of information so they rely on case managers to coordinate care.

RESPONSE #10: Youth placed in foster care will continue to have access to care coordination either through TCM or HSS/TFC/TFOC-P. Supports for foster services are administered through Child Protective Services and are monitored through contracts with the providers.

COMMENT #11: A few commenters requested the department delay the implementation of disallowing TCM concurrent with HSS/TFC/TFOC-P and study TCM as it relates to all services. The commenter asked the department to compare TCM specifically to high fidelity wraparound as an alternative to TCM. One commenter stated that limiting TCM is denying an evidence-based practice.

RESPONSE #11: The department will not delay the implementation of the proposed rule. The department recognizes that high fidelity wraparound is an evidence-based practice and will continue to evaluate and monitor the effectiveness of that program along with all services funded through the department. TCM is not recognized as an evidence-based practice by The Substance Abuse and Mental Health Services Administration.

COMMENT #12: Multiple commenters opposed the requirement in New Rule V (37.87.1405)(4)(c) that therapy must be delivered by the clinical lead. The commenters state that the clinical lead may potentially be responsible to provide family therapy for up to 50 families, which is not realistic and will diminish the quality of the service.

RESPONSE #12: Family therapy is one of five options offered in HSS/TFC/TFOC-P, from which the families may choose two based upon the prioritization of need. This provides families the opportunity to choose what services they will receive and allows providers to shift resources to provide services within the current bundled rate.

COMMENT #13: Many commenters stated that requiring family therapy to be part of HSS/TFC/TFOC-P forces families to discharge from their current provider, where there is an established therapeutic relationship, and it forces families to choose between in-home services and their current provider. Several commenters stated they believe all families needing HSS/TFC/TFOC-P should have family therapy to support better outcomes.

RESPONSE #13: The department agrees that families who need family therapy should have access to it. The proposed rules allow families to choose how to get that need met. Per the clinical management guidelines, a referral to HSS/TFC/TFOC-P suggests outpatient interventions have been attempted and have proven insufficient. All outpatient mental health services are intended to be time-limited interventions. The department disagrees that all families will need and want family therapy as part of HSS/TFC/TFOC-P. Currently, approximately 50% to 60% of families receiving HSS/TFC/TFOC-P are also receiving family therapy outside of HSS/TFC/TFOC-P.

COMMENT #14: Many commenters request the department clarify the language "provide therapy to the caregiver and the family". The commenters understanding of the intent of the rule was that other therapies needed outside HSS/TFC/TFOC-P are allowed with the exception of family therapy. They would also like to know if the department intends to restrict Comprehensive School and Community Treatment (CSCT) providers from offering family therapy concurrent with HSS/TFC/TFOC-P.

RESPONSE #14: It is the department's intent that family therapy, as described in ARM 37.87.703, is provided with or without the youth present, directed at the eligible youth's mental health needs and their impact on the family dynamics, and must be provided by the HSS/TFC/TFOC-P provider. When families are receiving both HSS/TFC/TFOC-P and CSCT, family therapy must be provided by the HSS/TFC/TFOC-P provider. However, there must be coordination with both individualized treatment plans.

COMMENT #15: A few commenters stated that requiring the clinical lead to provide therapy to the families and at the same time requiring the HSS-S to be the clinical supervisor of the same families is placing providers into a dual relationship with the family which is prohibited by the American Mental Health Code of Ethics.

RESPONSE #15: The department does not interpret the clinical lead providing therapy to families enrolled in HSS/TFC/TFOC-P and supervising the HSS-S as

fitting the definition of a dual relationship in the American Mental Health Code of Ethics, revised 2010.

COMMENT #16: A few commenters asked the department to remove the requirements in New Rule VIII (37.87.701)(1)(e) regarding CBPRS limitations for group and to clarify language in New Rule X (37.87.1413)(3)(e) and (f).

RESPONSE #16: The proposed language in New Rule VIII (37.87.701) and New Rule X (37.87.1413) relocates language currently located in other sections of the department's rules. There is no change in content from the current rule language; therefore, the department considers this comment outside of the scope of the proposed rules.

COMMENT #17: Some commenters asked if the HSS-S is required on the treatment team and asked the department to define the roles and qualifications of potential team members. Another commenter stated that if the families change the ITP team members at every ITP review, it will be difficult to consistently integrate the planning with care.

RESPONSE #17: The department intends for the service provider to be part of the ITP consistently to meet the other service requirements. Family members may select the team members every time there is a team meeting and an ITP is developed, at least every 90 days. At intake, the family must be informed of this choice before the ITP meetings. The department supports individualized treatment planning, use of natural supports, and family voice in planning the ITP. The department expects the family, with the assistance of the provider, to develop the roles and qualifications of the treatment team.

COMMENT #18: Several commenters asked the department to clarify New Rule I (37.87.1401)(4) as it relates to reimbursement of room, board, maintenance, or any other nontherapeutic component of TFOC-P.

RESPONSE #18: The department recognizes the proposed rule does not include TFOC-P and will add the applicable language to New Rule IX (37.87.1411) because it relates to TFOC-P services.

COMMENT #19: Several commenters opposed New Rule III (37.87.1404)(3), (4), and (5) regarding individualized treatment plan. Commenters stated the proposed rule appears to require the clinical lead be a member of the ITP team even if the family does not choose the clinical lead as part of their team and requires the clinical lead to sign ITPs of other mental health services. They state both new requirements are not possible for one full-time clinical lead, especially if they must sign the ITPs for other concurrent services. Commenters also asked the department to clarify if the "licensed person" can also be "in-training" and what is required, a new ITP every 90 days or a review every 90 days.

RESPONSE #19: The department's intent with New Rule III (37.87.1404)(3) is to require mental health providers to support integration of multiple treatment plans into one single plan of care when a family receives multiple services from multiple providers. The department is adding language to New Rule IV (37.87.1405)(4) clarifying the licensed person must make every effort to integrate treatment planning. The definition of a clinical lead in New Rule II (37.87.1402) allows the option of an in-training practitioner as defined in ARM 37.88.901. The department incorporates ARM 37.106.1916 in New Rule III (37.87.1404) which states the ITP is reviewed every 90 days.

COMMENT #20: Several commenters stated the proposed rules do not support wrap-around principles of family voice and choice, individualized services, collaboration, team based and outcome monitoring.

RESPONSE #20: The department intends to empower families to choose and receive services they need and want. Not all families will want or need a single model of combined community services by the same provider. The department supports family choice by allowing them to select treatment team members and requiring their agreement with the ITP. The department agrees that mental health services should be monitored for progress. The ITP team is designed for this purpose and the treatment team collectively monitors treatment goal progress.

COMMENT #21: Some commenters opposed New Rule II (37.87.1402)(3) requiring the clinical lead be a licensed mental health professional or in-training mental health professional stating this requirement is an unfunded mandate.

RESPONSE #21: The proposed rules require family therapy be an available option and the department believes therapy should be delivered by a licensed mental health professional or an in-training mental health professional.

COMMENT #22: One commenter disagreed with New Rule II (37.87.1402)(3) which changes the treatment supervisor to clinical lead. The commenter stated that clinical lead is not common terminology used in the mental health field to indicate professional stature.

RESPONSE #22: The department and provider committee chose clinical lead to reflect the clinical responsibilities of this position while not duplicating other positions in mental health services.

COMMENT #23: Many commenters asked the department to allow a grace period to implement New Rule VII (37.87.1402)(1) which requires providers be a licensed mental health center. The commenters asked for an implementation date of January 31, 2014.

RESPONSE #23: The department agrees to this request and will add language to reflect implementation of this requirement as January 31, 2014.

COMMENT #24: Several commenters asked the department to define what is meant by a cultural assessment in New Rule III (37.87.1404)(1).

RESPONSE #24: Best practice and national industry standards provide resources for conducting needs assessment based on strength and culture. Providers should refer to professional and industry standards for tools to develop an ITP based on strength, needs, and culture.

COMMENT #25: Several commenters asked what is meant by a functional assessment. Is it a global functional assessment or a behavioral functional assessment?

RESPONSE #25: The department is referring to a behavioral functional assessment not a global functional assessment. The rule requires use of the behavioral functional assessment to identify a potential crisis. Providers should refer to professional and industry standards for tools available to develop a behavioral functional assessment.

COMMENT #26: Several commenters stated agreement with the department's decision not to change the bundled rate. The flexibility of a bundled rate allows for the service to be available to families 24 hours a day.

RESPONSE #26: The department thanks the commenters for their input.

COMMENT #27: One commenter asked the department if the HSS-S and the clinical lead must be full-time employees.

RESPONSE #27: The department is not requiring these positions to be filled by full-time staff. However, the provider must have adequate and appropriate staffing to meet the rule requirements.

6. The department intends to apply these rules retroactively to January 31, 2013. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ Care B. Lund
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State January 22, 2013

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 37.87.2205 pertaining to)
children's mental health non-Medicaid)
respite)

TO: All Concerned Persons

1. On December 6, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-620 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2456 of the 2012 Montana Administrative Register, Issue Number 23.

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

3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

/s/ Richard H. Opper
Richard H. Opper, Director
Public Health and Human Services

Certified to the Secretary of State January 22, 2013.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.11.105, 42.11.211,)
42.11.245, 42.11.402, 42.11.409, and)
42.13.804 relating to liquor stores,)
vendors, licensees, and distilleries)

TO: All Concerned Persons

1. On November 23, 2012, the department published MAR Notice Number 42-2-887 regarding the proposed amendment of the above-stated rules at page 2333 of the 2012 Montana Administrative Register, Issue Number 22.

2. A public hearing was held on December 17, 2012 to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received. However, in order to more closely mirror recent language amendments made to related rules following public comment on a similar subject, and to define a term being used, the department further amends ARM 42.11.105 and 42.11.402 as follows:

42.11.105 DEFINITIONS As used in subchapters 1, 2, and 4, the following definitions apply:

(1) through (13) remain as proposed.

(14) "Primary packaging" means the container that directly holds the alcoholic beverage. Examples of primary packaging include, but are not limited to, aluminum cans, glass bottles, and a box containing a plastic bladder or other soft flexible container.

(14) through (22) remain as proposed, but are renumbered (15) through (23).

AUTH: 16-1-103, 16-1-104, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, 16-1-401, 16-1-404, 16-1-411, 16-2-101, 16-2-201, 16-2-301, 16-3-107, MCA

42.11.402 INVENTORY POLICY (1) remains as proposed.

(2) ~~All products~~ Each product a vendor desires to sell in the state of Montana must be approved by the department prior to being accepted into the state liquor warehouse. A vendor shall submit In order to consider the product for approval, the department must receive a picture copy of the product requested for approval product's primary packaging.

(3) Liquor products are a mature product category, restricted by law to only consumers age 21 or older and who are not intoxicated, and therefore should be marketed in a responsible and appropriate manner. The department, in its discretion and on a case-by-case basis, will not approve a liquor product that:

(a) blurs the distinction between an alcoholic and nonalcoholic product by utilizing labeling, and/or primary packaging ~~and/or containers~~ that emphasize

features that are most commonly associated with nonalcoholic consumable products including, but not limited to:

(a)(i) through (a)(iv) remain as proposed.

(b) uses flavors that are ~~most commonly associated with~~ designed to target or particularly appeal to underage persons, such as:

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

(c) contains graphics or elements that:

(i) are ~~most commonly associated with~~ designed to target or particularly appeal to underage persons;

(ii) minimizes, fails to identify, or disguises that the ~~product's~~ product contains alcohol content; or

(iii) alludes to or suggests irresponsible, excessive, or underage consumption;

(d) requires specialized handling requirements such as frozen or refrigerated products.

(4) remains as proposed.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-1-103, 16-1-104, 16-1-302, MCA

3. Therefore, the department amends ARM 42.11.105 and 42.11.402 as shown above; and amends ARM 42.11.211, 42.11.245, 42.11.409, and 42.13.804 as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State January 22, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.15.107, 42.15.110,)
42.15.213, 42.15.216, 42.15.315,)
42.15.316, 42.15.318, 42.15.403,)
42.15.605, 42.15.901, 42.15.902, and)
42.15.903 relating to income tax)

TO: All Concerned Persons

1. On November 23, 2012, the department published MAR Notice Number 42-2-888 regarding the proposed amendment of the above-stated rules at page 2339 of the 2012 Montana Administrative Register, Issue Number 22.

2. A public hearing was held on December 17, 2012, to consider the proposed amendments. No one appeared at the hearing to testify. Written comments were received from Jane Egan, of the Montana Society of Certified Public Accountants, and Nancy Higgins Schlepp, President of the Montana Taxpayers Association. The comments are summarized as follows, along with the response of the department:

COMMENT NO. 1: Ms. Egan and Ms. Schlepp both commented on the addition of the language in ARM 42.15.318(5). They stated that the proposed change unnecessarily complicates the NOL election, and the election to forego the carryback period at the federal level should govern at the Montana level unless the taxpayer affirmatively elects to depart from the federal election. This simplifies the election and eliminates the problem of failing to elect on Montana by relying on the Federal election. Montana should follow federal elections whenever possible for simplicity.

RESPONSE NO. 1: The department thanks Ms. Egan and Ms. Schlepp for their comments and appreciates this opportunity to address their concerns. The calculation of a Montana net operating loss is separate from the calculation of a federal net operating loss. Accordingly, a taxpayer filing a Montana income tax return is allowed to forego the carryback of a Montana net operating loss regardless of the election they made on the federal return.

The change will ensure that taxpayers are provided with an important opportunity to evaluate whether or not an election to forego the carryback of a Montana net operating loss is beneficial for them. The change in reporting requirements will ensure that the Montana Department of Revenue receives the proper documentation to support a taxpayer's separate election and will also provide assurance to the taxpayer that their separate election was made for Montana purposes.

3. The department amends ARM 42.15.107, 42.15.110, 42.15.213,

42.15.216, 42.15.315, 42.15.316, 42.15.318, 42.15.403, 42.15.605, 42.15.901, 42.15.902, and 42.15.903, as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State January 22, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT AND
ARM 42.25.501, 42.25.512,	)	TRANSFER
42.25.513, 42.25.514, 42.25.1801,)	
42.25.1809, 42.25.1813, and the)	
transfer of ARM 42.32.101)	
(42.25.1501), 42.32.102 (42.25.1502),)	
42.32.103 (42.25.1503), 42.32.104)	
(42.25.1504), 42.32.105 (42.25.1505),)	
42.32.106 (42.25.1506), and)	
42.32.107 (42.25.1507), relating to)	
natural resource taxes)	

TO: All Concerned Persons

1. On November 23, 2012, the department published MAR Notice Number 42-2-890 regarding the proposed amendment and transfer of the above-stated rules at page 2366 of the 2012 Montana Administrative Register, Issue Number 22.

2. A public hearing was held on December 17, 2012, to consider the proposed amendment and transfer. Gail Abercrombie, of GAILA Consulting for the Montana Petroleum Association, appeared and testified at the hearing. No written comments were received. The oral comments are summarized as follows, along with the responses of the department:

COMMENT NO. 1: With regard to ARM 42.25.1809, Ms. Abercrombie asked if the date in 7-1-05, MCA, was incorrect and if that was the reason for the proposed change. She further inquired about the history being stricken from the rule and whether that information would be available to the public in the future if needed.

RESPONSE NO. 1: The department appreciates Ms. Abercrombie's interest and participation in this rulemaking process. As part of the biennial review of all its rules, the department determined the need to amend the effective date of the table that would remain in ARM 42.25.1809(1), to match with the October 1, 2006 date in the current Board of Oil and Gas rules. There were no changes to the actual percentage rates in the table, only the date was revised.

The history will be maintained in the department's records for this rulemaking action. The department also maintains copies of all its past amended and repealed rule language for historical research purposes. This is public information and is available upon request.

COMMENT NO. 2: Ms. Abercrombie asked if the department would continue to change the rules in the future and how long rules are kept. For example, if the Board of Oil and Gas were to change the amount of privilege and license tax, would the department then adopt a new rule or add a new part?

RESPONSE NO. 2: Current rules will remain in effect until such a time that a statutory or Board of Oil and Gas administrative rule necessitates a revision by the department. Depending on the nature of the change, the current rules will remain on the books during any transition period and until the expiration of the five-year statute of limitations. If needed, a new table with a new effective date could be added.

COMMENT NO. 3: Ms. Abercrombie asked what the process would be for transferring the resource indemnity rules from one chapter to another, relative to renumbering the rules and maintaining the history.

RESPONSE NO. 3: The purpose of the amendment is to relocate all of the natural resource related rules into a single chapter. The newly assigned ARM numbers will be placed numerically behind those already being used in chapter 25, in the most logical order. The rules, both new and transferred, will forever cross-reference with each other in the history section for each respective rule.

3. The department amends ARM 42.25.501, 42.25.512, 42.25.513, 42.25.514, 42.25.1801, 42.25.1809, and 42.25.1813; and transfers ARM 42.32.101 (42.25.1501), 42.32.102 (42.25.1502), 42.32.103 (42.25.1503), 42.32.104 (42.25.1504), 42.32.105 (42.25.1505), 42.32.106 (42.25.1506), and 42.32.107 (42.25.1507), as proposed.

4. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. Select the "Laws and Rules" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rule Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State January 22, 2013

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.12.204 pertaining to the)
payment threshold--inflation)
adjustment for lobbyists)

TO: All Concerned Persons

1. On December 20, 2012 the Commissioner of Political Practices published MAR Notice No. 44-2-185 pertaining to the proposed amendment of the above-stated rule at page 2593 of the 2012 Montana Administrative Register, Issue Number 24.

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

3. No comments or testimony were received.

/s/ James Scheier
James Scheier
Rule Reviewer

/s/ James W. Murry
James W. Murry
Commissioner

Certified to the Secretary of State January 22, 2013.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2012. This table includes those rules adopted during the period October 1, 2012, through December 31, 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 September 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 2012/2013 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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BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in December 2012 appear. Vacancies scheduled to appear from February 1, 2013, through April 30, 2013, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

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

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of January 1, 2013.

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

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Real Estate Appraisers (Labor and Industry)			
Mr. George Simek Billings	Governor	Schmidt	12/13/2012 5/1/2014
Qualifications (if required): real estate appraiser			
Family Education Savings Oversight Committee (Higher Education)			
Ms. Laura McGee Billings	Governor	Jarussi	12/13/2012 7/1/2016
Qualifications (if required): public representative			
Future Fisheries Review Panel (Fish, Wildlife and Parks)			
Mr. Alan Johnstone Wilsall	Governor	reappointed	12/13/2012 7/1/2014
Qualifications (if required): commercial agriculture representative			
Mr. Marvin Miller Butte	Governor	reappointed	12/13/2012 7/1/2014
Qualifications (if required): mining reclamation expert			
Mr. Jim Stone Ovando	Governor	reappointed	12/13/2012 7/1/2014
Qualifications (if required): irrigated agriculture representative			
Montana Alfalfa Seed Committee (Agriculture)			
Mr. Dallas Steiger Hysham	Governor	reappointed	12/21/2012 12/21/2015
Qualifications (if required): alfalfa seed grower			

BOARD AND COUNCIL APPOINTEES FROM DECEMBER 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Alfalfa Seed Committee (Agriculture) cont.			
Mr. Tim Wetstein Joliet	Governor	reappointed	12/21/2012 12/31/2015
Qualifications (if required): alfalfa seed grower			
Youth Justice Council (Justice)			
Ms. Erika Lindbloom Lewistown	Governor	Lindbloom	12/13/2012 3/6/2014
Qualifications (if required): youth representative			
Mr. Randy Shipman Dillon	Governor	Oliveira	12/13/2012 3/6/2014
Qualifications (if required): representative of public agencies			

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2013 THROUGH APRIL 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects and Landscape Architects (Labor and Industry)		
Ms. Shelly Engler, Bozeman Qualifications (if required): licensed landscape architect	Governor	3/27/2013
Mr. Carl A. Thuesen, Billings Qualifications (if required): licensed landscape architect	Governor	3/27/2013
Ms. Maire O'Neill, Bozeman Qualifications (if required): registered architect with the MSU School of Architecture	Governor	3/27/2013
Ms. Janet Cornish, Billings Qualifications (if required): public representative	Governor	3/27/2013
Board of Dentistry (Labor and Industry)		
Dr. Aimee R. Ameline, Great Falls Qualifications (if required): dentist	Governor	3/29/2013
Board of Hail Insurance (Agriculture)		
Mr. Jim Schillinger, Baker Qualifications (if required): public member	Governor	4/18/2013
Board of Livestock (Livestock)		
Mr. John Lehfeltd, Lavina Qualifications (if required): sheep producer	Governor	3/1/2013
Mr. Stan Boone, Ingomar Qualifications (if required): cattle producer	Governor	3/1/2013

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2013 THROUGH APRIL 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Livestock (Livestock) cont. Ms. Rebecca Weed, Belgrade Qualifications (if required): sheep producer</p>	Governor	3/1/2013
<p>Board of Optometry (Labor and Industry) Dr. Rock E. Svennungsen, Shelby Qualifications (if required): registered optometrist</p>	Governor	4/3/2013
<p>Board of Public Education (Higher Education) Ms. Angela McLean, Anaconda Qualifications (if required): resident of District 1</p>	Governor	2/1/2013
<p>Rep. Douglas E. Cordier, Columbia Falls Qualifications (if required): resident of District 1 and a Democrat</p>	Governor	2/1/2013
<p>Board of Regents (Education) Ms. Lynn Hamilton, Havre Qualifications (if required): resident of District 2</p>	Governor	2/1/2013
<p>Mr. Paul Tuss, Havre Qualifications (if required): resident of District 2</p>	Governor	2/1/2013
<p>Clinical Laboratory Science Practitioners (Labor and Industry) Ms. Alison Mizner, Kalispell Qualifications (if required): clinical laboratory practitioner</p>	Governor	4/16/2013

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2013 THROUGH APRIL 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>County Printing Board (Administration) Commissioner Marianne Roose, Eureka Qualifications (if required): county commissioner</p>	Governor	4/1/2013
<p>Mr. Dan Killoy, Miles City Qualifications (if required): printing industry representative</p>	Governor	4/1/2013
<p>Mr. Milton Wester, Laurel Qualifications (if required): printing industry representative</p>	Governor	4/1/2013
<p>Mr. Calvin J. Oraw, Sidney Qualifications (if required): public representative</p>	Governor	4/1/2013
<p>Commissioner Laura Obert, Townsend Qualifications (if required): county commissioner</p>	Governor	4/1/2013
<p>MSU Northern Local Executive Board (University System) Mr. Darrell Briese, Havre Qualifications (if required): public representative</p>	Governor	4/15/2013
<p>Montana Arts Council (Arts Council) Ms. Jackie Parsons, Browning Qualifications (if required): public representative</p>	Governor	2/1/2013
<p>Ms. Arlene Parisot, Helena Qualifications (if required): public representative</p>	Governor	2/1/2013

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2013 THROUGH APRIL 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Arts Council (Arts Council) cont. Ms. Kathleen Schlepp, Miles City Qualifications (if required): public representative	Governor	2/1/2013
Ms. Tracy Linder, Molt Qualifications (if required): public representative	Governor	2/1/2013
Mr. Corwin Clairmont, Ronan Qualifications (if required): public representative	Governor	2/1/2013
Montana Pulse Crop Advisory Committee (Agriculture) Mr. Brian Kaae, Dagmar Qualifications (if required): none specified	Director	2/13/2013
Montana State University - Billings (Governor) Ms. Kris Carpenter, Billings Qualifications (if required): public representative	Governor	4/15/2013
Montana State University - Bozeman (Governor) Mr. Paul Gatzemeier, Billings Qualifications (if required): public representative	Governor	4/15/2013
Montana State University - Great Falls College of Technology (Governor) Ms. Joan Bennett, Great Falls Qualifications (if required): public representative	Governor	4/15/2013

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2013 THROUGH APRIL 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Employees Retirement Board (Administration)		
Ms. Dianna M. Porter, Butte	Governor	4/1/2013
Qualifications (if required): public representative		
Ms. Darcy Halpin, Belgrade	Governor	4/1/2013
Qualifications (if required): retired public employee		
State Compensation Insurance Fund Board (Administration)		
Rep. Jane DeBruycker, Dutton	Governor	4/28/2013
Qualifications (if required): policy holder		
Mr. James Swanson, Glendive	Governor	4/28/2013
Qualifications (if required): insurance producer and a policy holder		
Mr. Ken Johnson, Missoula	Governor	4/28/2013
Qualifications (if required): representative of private enterprise and a policy holder		
Mr. Thomas R. Heisler, Great Falls	Governor	4/28/2013
Qualifications (if required): representative of private enterprise and a policy holder		
University of Montana (Governor)		
Ms. Ann Boone, Missoula	Governor	4/15/2013
Qualifications (if required): public representative		
University of Montana - Helena College of Technology (Governor)		
Mr. Pat Clinch, Helena	Governor	4/15/2013
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- FEBRUARY 1, 2013 THROUGH APRIL 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
University of Montana - Montana Tech (Governor) Mr. Tony Laslovich, Anaconda Qualifications (if required): public representative	Governor	4/15/2013
University of Montana - Western (Governor) Mr. William Kriegel, Dillon Qualifications (if required): public representative	Governor	4/15/2013