

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 6

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE MONTANA PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.1302, 2.43.2114,	)	AMENDMENT
2.43.2607, 2.43.2608, and 2.43.2902)	
pertaining to definitions, required	)	NO PUBLIC HEARING
employer reports, payment of	)	CONTEMPLATED
estimated benefits, return to covered)	
employment by PERS, SRS, or)	
FURS retiree report, and death)	
payments, survivor benefits and)	
optional retirement benefits)	

TO: All Concerned Persons

1. On May 13, 2013, the Montana Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board 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 Public Employees' Retirement Board no later than 5:00 p.m. on April 18, 2013, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employees' Retirement Board, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD/Montana Relay Service (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.1302 DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

(1) through (9) remain the same.

(10) "Filed" or "filed with the board" generally means the mailing of a form or payment in a stamped envelope which is properly addressed to MPERA or the board.

(a) The postmark date will be used to determine the date on which filing occurs.

(b) If the form or payment is hand-delivered, it is considered filed on the day it is personally delivered to the MPERA office.

(c) If the form is faxed or e-mailed to MPERA ~~or the board~~, it is considered filed on the day it is received in the MPERA office, provided a hard copy is received

in the MPERA office within five working days of the filing date. ~~A form cannot be filed by e-mail as~~ because an original signature is required.

(11) through (27) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: The Montana Public Employees' Retirement Board (PERB) is currently in the process of converting to an imaging system for all documents received. It is necessary to provide clarification as to when a document is received to determine what the correct filing date for PERB will be. Because there is a concern about the image quality of scanned documents, similar to faxed documents, we propose to require the original be mailed to MPERA within five working days.

2.43.2114 REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall file required employer reports, for member and nonmember employees, other than working retiree reports required by ARM 2.43.2608 and optional member election applications required by ARM 2.43.2102, no later than five working days after each regularly occurring payday.

(a) through (5) remain the same.

(6) Delinquent reports are subject to a \$10 per day penalty fee, unless the board waives all or part of the penalty for good cause. Penalty fees shall be submitted separate from normal payroll reports.

AUTH: 19-2-403, MCA

IMP: 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, 19-3-2117, 19-7-1101, MCA

STATEMENT OF REASONABLE NECESSITY: This rule change is necessary to clarify that both member and nonmember reports are required to be submitted within the five-day time period defined in this rule. The fee is needed as an enforcement mechanism to encourage timely submissions and penalize late submissions. Section 19-2-506(3)(a), MCA authorizes the board to establish by rule the penalty for late reporting.

2.43.2607 PAYMENT OF ESTIMATED BENEFITS (1) and (2) remain the same.

(3) The first benefit will be payable the last working day of the month in which the benefit began. Future benefits will be payable the last working day of each succeeding month.

(3) through (5) remain the same but are renumbered (4) through (6).

AUTH: 19-2-403, MCA

IMP: 19-2-403, 19-2-502, 19-2-901, MCA

STATEMENT OF REASONABLE NECESSITY: This rule change is necessary to

clarify to members and benefit recipients when payments will be issued. There have been numerous inquiries as to when the payments occur. The philosophy is that similar to being paid after working, individuals will be paid their retirement benefits after they have been retired for the month.

2.43.2608 RETURN TO COVERED EMPLOYMENT BY PERS, SRS, OR FURS RETIREE – REPORT (1) through (6) remain the same.

(7) Delinquent reports are subject to a \$10 per day penalty fee unless the board waives all or part of the penalty for good cause. Penalty fees shall be submitted separate from normal payroll reports.

AUTH: 19-2-403, MCA

IMP: 19-2-506, 19-3-1104, 19-3-1106, 19-7-1101, 19-13-301, MCA

STATEMENT OF REASONABLE NECESSITY: This rule change is necessary to define the penalty fees which could be assessed for delinquent filing of certification reports. Certification reports are required employer filed reports and have not been correctly filed. Section 19-2-506(3)(a), MCA provides the board with authority to assess penalty fees on required employer reports. The fee is needed as an enforcement mechanism to encourage timely submissions and penalize late submissions.

This rule change is necessary to identify the working retiree certification as a required report and to apply the same penalties for reporting noncompliance as for member and nonmember payroll reporting.

2.43.2902 DEATH PAYMENTS, SURVIVOR BENEFITS, AND OPTIONAL RETIREMENT BENEFITS (1) and (2) remain the same.

(3) Upon the death of a retired member receiving an option 2, 3, or 4 benefit, a contingent annuitant must submit a certified copy of the member's death certificate to MPERA. Once the death certificate is filed with MPERA, the missed payments, if any, will be paid.

(4) through (7) remain the same.

AUTH: 19-2-403, MCA

IMP: 19-2-801, 19-3-1201, 19-5-801, 19-5-802, 19-6-901, 19-6-902, 19-6-903, 19-7-901, 19-8-1001, 19-8-1002, 19-8-1003, 19-9-1101, 19-9-1102, 19-13-902, 19-13-903, MCA

STATEMENT OF REASONABLE NECESSITY: This rule change is necessary to encourage timely submission of certified death certificates by contingent annuitants. Payments are suspended effective upon notification of death of member. There is a possibility of missed payments to the contingent annuitants. If any missed payments occur, they will be paid in addition to the monthly benefit in which the death certificate is filed in the office.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Public Employees' Retirement Board, P.O. Box 200131, Helena, Montana, 59620; telephone (406) 444-3154; fax (406) 444-5428; TDD/Montana Relay Service (406) 444-1421; or e-mail mpera@mt.gov., and must be received no later than 5:00 p.m., April 25, 2013.

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 to Kris Vladic at the above address no later than 5:00 p.m., April 25, 2013.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 6,695 persons based on approximately 66,956 defined benefit retirement plan members as of June 30, 2012.

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 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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Melanie Symons
Melanie Symons, Legal Counsel
and Rule Reviewer

/s/ Scott Moore
Scott Moore
President
Public Employees' Retirement Board

Certified to the Secretary of State March 18, 2013.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration) PROPOSED ADOPTION
of the 2015 Biennium Treasure State)
Endowment Program – Emergency)
Grants)

TO: All Concerned Persons

1. On April 17, 2013, at 3:00 p.m., the Department of Commerce will hold a public hearing in Room 504A of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, to consider the proposed adoption of the above-stated rule.

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., April 12, 2013, to advise us of the nature of the accommodation that you need. Please contact Amy Alton, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCTSEP@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE TREASURE PROGRAM (TSEP) – EMERGENCY GRANTS (1) The Department of Commerce adopts and incorporates by reference the 2015 Biennium Emergency Grant Application Guidelines for TSEP Emergency Grants as rules for the administration of the 2015 Biennium Treasure State Endowment Program – Emergency Grants.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of emergency grants to cities, towns, counties, consolidated governments, county or multicounty water, wastewater or solid waste districts, and tribal governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Planning Bureau web site at <http://comdev.mt.gov/planningbureau/planningbureau.mcp>.

AUTH: 90-6-701, MCA
IMP: 90-6-701, MCA

REASON: It is reasonably necessary to adopt this new rule governing the department's administration of the emergency grant component of the Treasure

State Endowment Program, 90-6-701, et seq., MCA. Cities, towns, counties, consolidated governments, county or multicounty water, wastewater or solid waste districts, and tribal governments must have these guidelines available before the entities may apply to the department for 2015 biennium emergency grants from the Treasure State Endowment Program. The guidelines describe the requirements with which eligible entities must comply in order to apply for, receive, and administer TSEP emergency grant funds.

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 the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCTSEP@mt.gov, and must be received no later than 5:00 p.m., April 25, 2013.

5. Maria Jackson, Planning Specialist, 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 listed 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, do not apply.

/s/ KELLY A. LYNCH
KELLY A. LYNCH
Rule Reviewer

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

Certified to the Secretary of State March 18, 2013.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rule I pertaining to the administration) PROPOSED ADOPTION
of the 2015 Biennium Treasure State)
Endowment Program – Planning)
Grants)

TO: All Concerned Persons

1. On April 17, 2013, at 2:00 p.m., the Department of Commerce will hold a public hearing in Room 504A of the Park Avenue Building at 301 South Park Avenue, in Helena, Montana, to consider the proposed adoption of the above-stated rule.

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., April 12, 2013, to advise us of the nature of the accommodation that you need. Please contact Amy Alton, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCTSEP@mt.gov.

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

NEW RULE I INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE TREASURE PROGRAM (TSEP) – PLANNING GRANTS (1) The Department of Commerce adopts and incorporates by reference the 2015 Biennium Infrastructure Planning Grant Application and Administration Guidelines for TSEP Infrastructure Planning Grants as rules for the administration of the 2015 Biennium Treasure State Endowment Program – Planning Grants.

(2) The rules incorporated by reference in (1) relate to the scope and procedures for the award, administration, monitoring, and close-out of matching planning grants to cities, towns, counties, consolidated governments, county or multicounty water, wastewater or solid waste districts, and tribal governments.

(3) Copies of the regulations adopted by reference in (1) may be obtained from the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523, or on the Planning Bureau web site at <http://comdev.mt.gov/planningbureau/planningbureau.mcp>.

AUTH: 90-6-701, MCA
IMP: 90-6-701, MCA

REASON: It is reasonably necessary to adopt this new rule governing the department's administration of the planning grant component of the Treasure State

Endowment Program, 90-6-701, et seq., MCA. Cities, towns, counties, consolidated governments; county or multicounty water, wastewater or solid waste districts, and tribal governments must have these guidelines available before the entities may apply to the department for 2015 biennium planning grants from the Treasure State Endowment Program. The guidelines describe the requirements with which eligible entities must comply in order to apply for, receive, and administer TSEP planning grant funds.

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 the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCTSEP@mt.gov, and must be received no later than 5:00 p.m., April 25, 2013.

5. Maria Jackson, Planning Specialist, 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 listed in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

/s/ KELLY A. LYNCH
KELLY A. LYNCH
Rule Reviewer

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

Certified to the Secretary of State March 18, 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
RULE I and amendment of ARM) PROPOSED ADOPTION AND
10.55.701, 10.55.704, 10.55.708,) AMENDMENT
10.55.804, and 10.55.906 relating to)
accreditation standards)

TO: All Concerned Persons

1. On April 22, 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 adoption of New Rule I and amendment 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 April 15, 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 adopted provides as follows:

NEW RULE I OFFICIAL HIGH SCHOOL TRANSCRIPT (1) The high school transcript is the official academic record of the courses and credits completed by a high school student. At a minimum, the high school transcript must include:

- (a) statewide student identifier;
- (b) student legal name, address, gender, and date of birth;
- (c) statewide school identifier, school name, school address, school phone;
- (d) student grade level;
- (e) student entry date and exit date;
- (f) course code, course title, course grade, and credits earned for each school term and course taken;
- (g) grade point average;
- (h) graduation date;
- (i) diploma type;
- (j) class rank;
- (k) number in class;
- (l) for each test reported, the test date and the score for each portion of the test;
- (m) academic honors, if applicable; and
- (n) required number of credits for graduation.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

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

10.55.701 BOARD OF TRUSTEES (1) through (4)(a)(i) remain the same.

(ii) be aligned with applicable district goals, standards of the Board of Public Education, and the district's mentorship and induction program required under ARM 10.55.701(8 ~~5~~)(c);

(iii) through (5)(b) remain the same.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.704 ADMINISTRATIVE PERSONNEL: ASSIGNMENT OF DISTRICT SUPERINTENDENTS (1) through (1)(b) remain the same.

(c) School systems with 18 or more ~~than 18~~ and fewer than 31 FTE licensed staff shall employ a half-time (.50 FTE) licensed superintendent. One administrator may serve as both superintendent and principal as defined in ARM 10.55.705(2)(a) or (2)(b).

(d) through (2) remain the same.

AUTH: 10-2-114, MCA

IMP: 20-2-121, MCA

10.55.708 TEACHING ASSIGNMENTS (1) and (2) remain the same.

(3) Clarifications of teaching assignments in grades 5 through 12 departmentalized settings are published in the Licensure Endorsement Requirements Related to Teaching Assignments, ~~adopted by the Board of Public Education July 2012~~, a copy of which may be found at: <http://www.opi.mt.gov/pdf/Accred/Ch55/Appendices.pdf> ~~(Appendix A)~~.

(4) and (5) remain the same.

AUTH: 20-2-114, MCA

IMP: 20-2-121, MCA

10.55.804 GIFTED AND TALENTED (1) through (3) remain the same.

~~At its December 15, 1989, meeting, the Administrative Code Committee unanimously voted that this rule is invalid because it mandates a gifted and talented children program in each school district. Section 20-7-902(1), MCA, provides that "a school district may identify gifted and talented children and devise programs to serve them". The code section thus makes establishment of the program discretionary, at the choice of the school district. An administrative rule is invalid if it conflicts with a statute. See 2-4-305(5) and (6)(a), MCA. The committee, which has general legislative branch oversight over the adoption and application of administrative rules, has done extensive research into the validity of this rule and considered the matter at numerous committee meetings. This objection is authorized by, and is published~~

~~pursuant to, 2-4-406, MCA, which also provides that once the objection is published the agency that adopted the rule bears the burden, in any action challenging the legality of the rule, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with sections 2-4-302, 2-4-303, and 2-4-305, MCA. That section also provides that the court may award costs and reasonable attorney fees against the agency if the court finds that the agency failed to meet its burden of proof and that the rule was adopted in arbitrary and capricious disregard for the purposes of the statute that authorized the rule. The Administrative Code Committee's objection to the rule does not constitute a vote or opinion on the question of the desirability of gifted and talented children programs, but rather, an opinion solely on the issue of whether the rule violates the Montana Administrative Procedure Act found in Title 2, Chapter 4, of the Montana Code Annotated in that the rule makes mandatory what the Montana Code Annotated makes discretionary.~~

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

10.55.906 HIGH SCHOOL CREDIT (1) through (4) remain the same.

(a) Montana high schools shall accept such units of credit taken with the approval of the accredited Montana high school in which the student was then enrolled and which appear on the student's official high school transcript.

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

5. The effective date of the rules being adopted and the amendments to the rules in ARM Title 10, chapter 55 is July 1, 2013.

6. REASON: New Rule I is being proposed to help establish data linkages between K-12 and post secondary education. The Office of Public Instruction, in partnership with the Office of the Commissioner of Higher Education, received a \$4 million grant from the U.S. Department of Education to establish data linkages between K12 and postsecondary education. The data linkage is required to create a connection between high school coursework and postsecondary performance. This data will also allow for the creation of an electronic transcript service to facilitate the process for high school students to apply for admission to postsecondary institutions.

ARM 10.55.701, 10.55.704, and 10.55.708 are being amended to correct errors and for consistency with rules adopted in the Notice of Adoption and Amendment published on October 11, 2012.

ARM 10.55.804 is being amended to delete the Administrative Code Committee objection. After receiving the Administrative Code Committee's objection, the Board of Public Education determined that it would not change its rule citing authority granted to it by the Montana Constitution. At the request of the Administrative Code Committee the 1991 Legislature enacted House Bill 116

repealing ARM 10.55.804. The Board of Public Education brought a declaratory judgment action against the Administrative Code Committee to determine if the Board had constitutional rulemaking powers to enact this rule.

Judge Sherlock in his March, 1992 decision determined that "The Board of Public Education, pursuant to Article X, Section 9(3), of the Montana Constitution is vested with rule-making authority. This provision is self-executing and independent of any power that is delegated to the Board by the legislature. The Board's rule mandating gifted and talented programs is within the purview of the Board's constitutional power of general supervision... ."

The Administrative Code Committee did not appeal the Court's decision and therefore the determination made by Judge Sherlock controls. The Administrative Code Committee's objection has been overruled by the Court and should be deleted from the Administrative Rules.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: 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., April 25, 2013.

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

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

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

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

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

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

Certified to the Secretary of State March 18, 2013.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
18.8.510A, pertaining to motor carrier	)	AMENDMENT
services)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On April 29, 2013, the Department of Transportation proposes to amend the above-stated rule.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on April 18, 2013, to advise us of the nature of the accommodation that you need. Please contact Dan Kiely, Motor Carrier Services, Department of Transportation, P.O. Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-7629; fax (406) 444-9263; TDD (406) 444-7690 or (800) 335-7592; or e-mail dkiely@mt.gov.

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

18.8.510A REGULATIONS AND EQUIPMENT FOR FLAG VEHICLES

(1) A flag vehicle may be any passenger car or two axle truck a minimum of 60 inches wide. The maximum manufacturer's rating for the flag vehicle shall not exceed a gross vehicle weight rating of ~~10,000 pounds to~~ 14,000 pounds. Service or mechanic trucks owned or contracted by the permittee and used as a flag vehicle shall not exceed a gross vehicle weight rating of 26,001 pounds. A flag vehicle may not exceed legal limits of size and weight. Trucks used as flag vehicles shall be clearly distinguished from and identifiable as the escort vehicle. A flag vehicle may pull a trailer or carry any item or equipment which:

(a) remains the same.

(b) allows an unobstructed view of the flashing lights and signs used by the flag vehicle;

(c) and (d) remain the same.

(2) Service or mechanic trucks used as a flag vehicle must not have a utility box which extends above the cab more than 12 inches or beyond the width of the cab more than 6 inches on either side.

~~(2)~~(3) A sign with the words "oversize load" or similar wording shall be visible from the front of the vehicle and rear of the vehicle at all times when piloting an oversize load. Letters shall not be less than 8 inches in height. The letters shall be dark in color on a light colored background. When not being operated as a flag vehicle, signs must be removed.

~~(3)~~(4) Flashing amber lights, visible front and rear, a minimum of five inches in diameter, 50 candlepower, 60 to 90 flashes per minute, shall be mounted at each end of a "~~wide load~~" sign with the words "oversize load" or similar wording, on the roof of the flag vehicle. A revolving or strobe light may be substituted for flashing lights. Lights shall be flashing at all times when piloting an oversize load.

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

AUTH: 61-10-155, MCA

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

REASON: The proposed amendment is necessary to clarify that the use of service or mechanic trucks as flag vehicles is allowed under certain restrictions on gross vehicle weight, etc. The Motor Carriers of Montana indicated a need to have regulation allowing use of these types of vehicles as flag vehicles, under restrictions contained in administrative rule. The proposed amendments will also clarify other rule language to avoid confusion and make the language consistent internally.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Dan Kiely, Motor Carrier Services, Department of Transportation, P.O. Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-7629; fax (406) 444-9263; or e-mail dkiely@mt.gov, and must be received no later than 5:00 p.m., April 25, 2013.

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 to Dan Kiely at the above address no later than 5:00 p.m., April 25, 2013.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 9,570 persons based on the 95,702 permits issued in the 2012 calendar year.

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 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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State March 18, 2013.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 18.8.512 and 18.8.902) PROPOSED AMENDMENT
pertaining to motor carrier services)

TO: All Concerned Persons

1. On April 29, 2013 at 10:00 a.m. the Department of Transportation will hold a public hearing in the commission room of the Montana Department of Transportation, 2701 Prospect Ave., Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Transportation no later than 5:00 p.m. on April 22, 2013, to advise us of the nature of the accommodation that you need. Please contact Dan Kiely, Motor Carrier Services, Department of Transportation, P.O. Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-7629; fax (406) 444-9263; TDD 444-7696 or (800) 335-7592; or e-mail dkiely@mt.gov.

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

18.8.512 HEIGHT (1) through (3) remain the same.

(4) All divisible loads with a height of 14 feet 6 inches or less may be issued either a term or single trip special permit. Divisible loads may not exceed 14 feet 6 inches in height.

(5) All nondivisible loads with a height of 15 feet 6 inches or less may be issued either a term or single trip permit. Any permit must be verified for clearance as per (1) through (3).

(5)(6) Nonreducible Nondivisible loads with a height in excess of 44 15 feet 6 inches will be issued single trip special permits. Nondivisible loads in excess of 17 feet must follow the permit requirements of ARM 18.8.1101.

(6) A(7) Baled or loose hay loads with a height of 15 feet 6 inches or less may be issued a term or single trip special permit may be issued for height of 15 feet or less for baled or loose hay. Hay loads must not exceed 15 feet 6 inches except as per (8).

(8) In the event of a hay shortage or emergency drought declaration issued by the state or other governmental authority, the department may issue a single trip special permit for a baled or loose hay load with a height up to 16 feet. The hay load single trip special permit will be issued only for a route identified by the permittee and approved by the department.

(9) The department will enforce administrative penalties for violation of the height permitting requirements as per ARM 18.8.902.

AUTH: 61-10-155, MCA

IMP: 61-10-101, 61-10-103, 61-10-109, 61-10-121, 61-10-122, 61-10-123, 61-10-124, MCA

REASON: The proposed amendments are necessary to clarify the different types of permits which may be issued for different types of overheight loads to avoid confusion for truckers seeking overheight permits. The proposed amendments to (4) will clarify permits for divisible loads. The proposed amendments to (5) and (6) will increase allowable height to 15 feet 6 inches from the current 14 feet 6 inches, as has been requested by the motor carrier industry. The proposed amendment will also add a term permit for nondivisible overheight loads up to 15 feet 6 inches. Currently, loads in this category must obtain a single trip special permit. By allowing carriers to obtain a term permit after verification that no clearance obstructions exist on the route, the department will save resources that are now being spent issuing numerous single trip permits for the same loads on the same routes.

The proposed new (8) is necessary to allow the department to issue single trip special permits for an overheight hay load up to 16 feet in the event of hay shortages or drought-type emergencies. Currently, hay loads may not be permitted up to 16 feet, and in the event of a hay shortage or drought emergency, additional time and resources must be spent on permitting more numerous smaller loads. In the event of a shortage or emergency, the department would be able to accommodate the increased demand for these hay loads by issuance of special trip permits allowing loads up to 16 feet for hay only, and only for the duration of the shortage or emergency.

The proposed new (9) will add a cross reference to ARM 18.8.902 on penalties as a reminder that carriers seeking to avail themselves of the overheight term permit will remain responsible for damages, and be subject to penalties including permit suspensions for failure to comply with load conditions including damage to bridges or other infrastructure.

18.8.902 ADMINISTRATIVE PENALTIES (1) ~~The~~ Any department motor carrier services official who finds a person operating a vehicle, combination of vehicles, load, object or other thing in violation of the conditions of a special permit may confiscate the permit, issue a notice of violation, and impose administrative penalties. Except as stated in (2) and (3) of this rule, the following administrative penalties will result from the violations of a special permit issued to a permittee:

(a) and (b) remain the same.

(c) Third violation – ~~30~~ 7-day suspension.

(d) Fourth violation – ~~60~~ 30-day suspension.

(e) ~~Fifth violation – 90-day suspension.~~

(f)(e) For violations exceeding the ~~fifth~~ fourth violation, the permittee must apply in writing to the administrator of the motor carrier services division for a new permit.

(2) The department shall confiscate the permit of any permittee who crosses a structure in which speed restrictions are imposed or who does not comply with

proper flag vehicle requirements under ARM 18.8.510A and 18.8.511A. The permit shall be suspended for 72 hours.

(3) The department shall impose penalties for overheight loads permitted under ARM 18.8.512 which hit overhead obstructions due to permittee's failure to properly determine necessary clearance or adhere to allowable height requirements. The following penalties shall be imposed:

(a) load higher than permitted – 60-day suspension;

(b) failure to verify height clearance – 30-day suspension.

(2)(4) In addition to the penalties set forth above, in order to protect the safety of the traveling public, permit privileges may be revoked by the administrator of the motor carrier services division for failure by the permittee to comply with any state or federal commercial motor carrier requirements. In making a determination whether to revoke permit privileges under this rule, the administrator shall take into consideration the nature and number of violations by the permittee as well as the need to protect the safety of the traveling public and the protection of personal and public property. The administrator may consider patterns of noncompliance by a carrier permittee and may revoke a carrier's overall permit privileges.

(5) Any permittee who causes damage to a highway or highway structure will be billed for the cost of repairing the damage. The department may withhold issuance of future permits until any financial obligations imposed on a permittee due to the damage are met.

(3)(6) Notice of administrative penalties, suspension, or revocation of permit privileges, or imposition of damages pursuant to this rule shall:

(a) remains the same.

(b) clearly state the reason or reasons for revocation imposition of penalties or damages;

(c) advise the permittee of the right to appeal the decision to the Montana Transportation Commission as a contested case under ARM 18.8.101 through 18.8.107.

AUTH: ~~This rule is advisory only but may be a correct interpretation of the law. 61-10-155, MCA; IMPLIED, 61-10-121, 61-10-122, 61-10-143, MCA;~~
IMP: 61-10-121, 61-10-122, 61-10-123, 61-10-143, MCA

REASON: The proposed amendments are necessary to clarify the penalties for permit violations which apply to all permits. This rule is cross-referenced in ARM 18.8.512 to serve as notice to all overheight permit applicants that the department has penalties in place and will enforce the penalties, including suspension, as necessary for violations.

The proposed amendment is also necessary to delete the reference to the advisory nature of the rule. The department has full rulemaking authority under 61-10-155, MCA, to adopt rules to implement Title 61, chapter 10, MCA, thus the rule is not adopted under "implied" rulemaking authority, and the "advisory" designation is not appropriate under 2-4-308, MCA.

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: Dan Kiely, Motor Carrier Services, Department of Transportation, P.O. Box 4639, Helena, Montana, 59604-4639; telephone (406) 444-7629; fax (406) 444-9263; TDD 444-7696 or (800) 335-7592; or e-mail dkiely@mt.gov and must be received no later than 5:00 p.m., April 29, 2013.

5. Carol Grell Morris, staff attorney, Department of Transportation, 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, do not apply.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

/s/ Michael T. Tooley
Michael T. Tooley
Director
Department of Transportation

Certified to the Secretary of State March 18, 2013

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
24.29.201, 24.29.801, 24.29.804,) PROPOSED AMENDMENT AND
24.29.1201, 24.29.1202, 24.29.1203,) REPEAL
24.29.1404, 24.29.1702, 24.29.1721)
and 24.29.3802 and the repeal of)
24.29.1204 pertaining to workers')
compensation)

TO: All Concerned Persons

1. On April 18, 2013, at 1:00 p.m., a public hearing will be held in the Sanders Auditorium of the DPHHS Building, 111 North Sanders St., Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on April 12, 2013, to advise us of the nature of the accommodation that you need. Please contact Barbara Gullickson, Department of Labor and Industry, 1805 Prospect, Helena, Montana, 59601; telephone (406) 444-6451; fax (406) 444-4140; TDD/Montana Relay Service at (406) 444-6543; or e-mail bgullickson@mt.gov.

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

24.29.201 INTRODUCTION (1) The purpose of this subchapter is to ensure compliance with the workers' compensation and ~~occupational disease acts~~ act administered by the department. The department strives to accomplish this purpose through education, consensus building, and dedication to customer service.

(2) and (3) remain the same.

AUTH: 2-4-201, 39-71-203, ~~and 39-72-203~~ MCA

IMP: Title 2, chapters 3 and 4, MCA

REASON: The department determined it is reasonably necessary to delete an erroneous reference to the Occupational Disease Act and amend the authority cites, accordingly. The amendment further implements Senate Bill 481 from 2005, which merged occupational diseases into the Workers' Compensation Act and repealed the occupational disease statutes.

24.29.801 ACCIDENT REPORTING (1) remains the same.

~~(2) If an insurer changes an adjuster or an employer changes its third party adjuster, the department must be notified in writing by the office assuming the account(s), within 30 days from the time the account is transferred. The notification must include:~~

~~(a) the adjuster's or third party adjuster's business address and telephone number;~~

~~(b) an effective date of transfer;~~

~~(c) a general description of the type of claims transferred (if there are identifiable categories or classes of claims); and~~

~~(d) upon request for each claim transferred:~~

~~(i) the claimant's name;~~

~~(ii) the claimant's social security number;~~

~~(iii) the date of injury or occurrence; and~~

~~(iv) the insurer's claim number.~~

AUTH: 39-71-203, and 39-71-307, MCA

IMP: 39-71-307, and 39-71-603, MCA

REASON: The department is amending this rule to delete and relocate the requirement that insurers notify the department regarding reassignment of claims examination services. In 2007, the Legislature enacted Senate Bill 108 and amended 39-71-107, MCA, to require that insurers provide advance notice to the department when the insurer plans to reassign claims examination services. The department determined this requirement would more reasonably and logically be located in ARM 24.29.804, which deals with claims examiners, and is moving the provision accordingly.

24.29.804 ADJUSTERS EXAMINERS AND THIRD-PARTY

ADMINISTRATORS IN MONTANA (1) All workers' compensation and occupational disease claims filed pursuant to the Montana Workers' Compensation and Occupational Disease Acts Act must be adjusted by a person in Montana. For the purposes of this rule, a claim is deemed to be "adjusted by a person in Montana" if the person who can determine entitlement to benefits, authorize payment of all benefits due, manage the claim and has authority to settle the claim, maintains an office that is located in Montana and adjusts Montana claims from that office. The office may be in the examiner's personal residence located in Montana. The sole use of a mail box or mail drop located in Montana does not constitute maintaining an office in Montana.

(2) An insurer must maintain the documents related to each claim filed with the insurer under the Montana Workers' Compensation or Occupational Disease Acts Act at the office of the person adjusting the claim in Montana until the claim is settled. The documents may either be original documents, or duplicates of the original documents, and must be maintained in a manner which allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the ~~adjuster's~~ examiner's office must be made available by the insurer within 48 hours of a request for a file. Electronic or optically imaged documents are permitted by this rule.

(3) remains the same.

(4) At least 14 days in advance of a change in a third-party administrator responsible for workers' compensation claim examination services, the insurer must notify the department in writing, using the department's current Third-Party Administrator Change Form or by another format preapproved by the department. The written notification must be mailed, faxed, or e-mailed to the department's designated contact person.

(5) The insurer may delegate the duty to notify the department to a third-party administrator or policy holder.

(6) Failure to timely notify the department of a change in a third-party administrator may result in the imposition of an administrative penalty against the insurer, pursuant to 39-71-107, MCA.

AUTH: 39-71-107, 39-71-203, MCA

IMP: 39-71-105, 39-71-107 and ~~39-71-203~~, MCA

REASON: The department determined it is reasonably necessary to delete erroneous references to the Occupational Disease Act in text and the implementation cites. The 2005 Montana Legislature enacted Chapter 416, Laws of 2005 (Senate Bill 481), which merged occupational diseases into the Workers' Compensation Act and repealed the occupational disease statutes.

The department is amending this rule to replace the term "adjuster" with "examiner" and align with current industry terminology. The department is also amending (1) to clarify that in-state claims examiners may operate offices out of their personal Montana residences. This amendment reasonably accommodates a common home-office business model used by examiners in Montana and allows the separation of business and personal correspondence. The amendment meets the intent of the law, which is to require examiners to maintain Montana business offices, since the examiner with a home office does actually reside and work in Montana, and a business post office box is not used as a substitute for Montana residency.

In 2007, the Legislature enacted Senate Bill 108, amending 39-71-107, MCA, to require that advance notice is provided to the department when an insurer plans to reassign claims examination services. The department is relocating the notice requirement from ARM 24.29.801 and is updating to require that notice is provided prior to the claim services change.

24.29.1201 INTRODUCTION (1) ~~The procedure for determining whether lump sum conversion of department may approve a petition for a lump-sum settlement between an insurer and an injured worker or the worker's beneficiary, which converts permanent disability biweekly payments to a lump-sum payment, will be approved is generally defined in in accordance with the provisions of 39-71-741, MCA.~~

~~(2) The conversion can only be made upon written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, subject to the discretionary approval of the department as to the amount of the lump sum payment~~

~~and the advisability of the conversion. No department approval is required for a lump-sum payment of:~~

~~(a) accrued indemnity benefits;~~

~~(b) advance indemnity benefits; or~~

~~(c) an impairment award for a claim with a date of injury on or after July 1, 2005.~~

~~(3) It is presumed The department presumes that biweekly benefit payments are in the best interests of the worker or his beneficiary. The Department approval of an application a petition for lump-sum conversion by the department must be the exception, not the rule, and may be given only if the worker or his beneficiary demonstrates that his the worker's ability to sustain himself become financially self-sustaining is more probable with a whole or partial lump-sum conversion payment than with the biweekly payments and his the worker's other resources, as outlined by ARM 24.29.1202.~~

~~(4) Permanent Conversion of biweekly permanent partial disability benefits conversions to a lump-sum must meet the requirements of (3) above only when the claimant's date of injury was prior to July 1, 1991.~~

~~(5) Conversion of biweekly Permanent permanent total conversions disability benefits to a lump-sum must meet the test of (3) above plus all other requirements provided herein for all dates of injury. These rules do not apply to lump-sums of accrued benefits, impairment awards, or disputed liability settlements where no recognition is ever made of benefits due.~~

~~(5) (6) Controversies The workers' compensation court has jurisdiction over disputes between claimants and insurers regarding a conversion of biweekly disability payments to a lump-sum or a and disputes arising from the department's denial of approval of a petition for conversion to a lump-sum by the department, are considered disputes for which the workers' compensation judge has jurisdiction to make a decision. A dispute between an insurer and claimant is subject to mediation. A dispute arising from department denial of a petition for conversion is not subject to mandatory mediation.~~

~~(6) Lump sum settlement agreements reached prior to April 15, 1985, will be allowed and approved, or denied, under provisions of 39-71-741, MCA, in effect before enactment of Senate Bill 281. Section 39-71-741, MCA, as amended, will be applied to all lump sum settlements reached on or after April 15, 1985. An injured worker or his beneficiary submitting a lump sum settlement reached before April 15, 1985, must provide to the department a written statement that agreement was reached before April 15, 1985.~~

AUTH: 39-71-203, MCA

IMP: 39-71-741, MCA

REASON: The department is amending (2) to further specify that no department approval is required for a lump-sum payment by an insurer for accrued benefits, advance benefits, and impairment awards for claims with dates of injury after July 1, 2005. This amendment is reasonably necessary to further implement statutory changes to 39-71-741, MCA, through Senate Bill 8 in 2005.

The 2011 Montana Legislature enacted Chapter 36, Laws of 2011 (House Bill 359) and Chapter 167, Laws of 2011 (House Bill 334), bills that amended the Workers' Compensation Act. It is reasonably necessary to amend (3) and (5) to further implement the legislation by amending the criteria for department approval of lump-sum conversions and clarifying that the department may only disapprove a settlement agreement between an insurer and claimant to convert permanent partial disability payments to a lump-sum if the department finds the lump-sum amount inadequate.

The 1991 Montana Legislature enacted House Bill 837, which eliminated the requirement that an injured worker demonstrate financial need for a lump-sum payment of permanent partial disability benefits. It is reasonably necessary to amend (4) to implement the 1991 changes to the law. The amended rule will clarify that a claimant must still prove financial need to qualify for a lump-sum conversion of permanent total disability benefits.

It is reasonably necessary to amend new (6) to align with 39-71-741, MCA, and address confusion among parties by clarifying which disputes are subject to mediation. The department is also deleting obsolete provisions in former (6) regarding settlement agreements reached before April 15, 1985.

24.29.1202 DOCUMENTATION REQUIREMENTS (1) Requests for A petition to the department for lump-sum conversions conversion of biweekly permanent partial and permanent total and death disability benefits for all dates of injury must include a description of the lump-sum proposal, including but not limited to:

(a) analysis of current financial conditions as described in (3);

(b) analysis of financial condition under the proposed lump-sum conversion as described in (4), that includes a description of the use of the lump-sum and how this use will contribute to financially sustaining the worker over the same period biweekly payments would have been paid;

(c) analysis of financial condition that would be reasonably expected had the worker not been injured as described in (6); and

(d) an affidavit signed by the worker or his beneficiary, attesting to the validity of information provided in the worker's or beneficiary's written application petition.

(2) Requests for lump-sum conversions of permanent total and death benefits must include, in addition to the requirements of (1), calculations of the total amount of benefits to be converted and their reduction to present value at a 7% discount, compounded annually, or an analysis of financial condition that would be reasonably expected had the worker not been injured as described in (7). A petition to the department for conversion of biweekly permanent partial disability benefits to a lump-sum payment must include an analysis of current financial conditions as described in (3) only for a claim with a date of injury prior to July 1, 1991.

(3) "Analysis of current financial condition" for purposes of (1) shall include a list of all the worker's or beneficiary's income, assets, and liabilities, and as well as other available resources, including but not limited to:

(a) through (d) remain the same.

(4) "Analysis of financial condition under the proposed lump-sum conversion" for the purposes of subsection (1) shall include a description of the use of the lump

sum and how this use will contribute to financially sustaining the worker or beneficiary over the same period biweekly payments would have been paid. Additional documentation is required for permanent total or death benefit lump sum proposals if a proposal involves debts or business ventures as indicated in subsections ~~(5)~~ and ~~(6)~~.

~~(5)~~ (4) If a petition for lump-sum conversion of permanent total or death benefit lump sum proposal benefits involves the partial or total elimination of existing delinquent or outstanding debts, a debt management plan must be described and include:

(a) plan of management, through applying the proposed lump-sum ~~conversion~~ payment, of all existing delinquent or outstanding debts, both short- and long-term; and

(b) description of how the worker ~~or his beneficiary~~ will be sustained financially through use of the lump-sum ~~conversion~~ payment and other available resources, including cash available throughout the life of the debt management plan, to manage delinquent or outstanding debts.

~~(6)~~ (5) If a permanent total ~~or death~~ benefit lump-sum proposal involves a business venture, a business plan must be described and include:

(a) Information indicating the worker's ~~or beneficiary's~~ capability in proposed business venture, including:

(i) through (iv) remain the same.

(b) and (c) remain the same.

(d) A statement of cash that will be available to the worker ~~or his beneficiary~~ as income on a biweekly basis after start-up costs and other business expenses are considered throughout the life of the venture.

~~(7)~~ (6) "Analysis of financial condition that would be reasonably expected had the worker not been injured" for purposes of ~~subsection (2)~~ (1) must include a description of the income the worker ~~or beneficiary~~ would have received and the basis upon which the estimate is derived. The analysis must include:

(a) and (b) remain the same.

(7) A request for lump-sum settlement of medical benefits must include the following information:

(a) copy of medical reports documenting maximum medical improvement, current diagnosis, and recommendations for future treatment, if any;

(b) specific dollar amount of the settlement allocated to medical benefits;

(c) statement from the claimant and insurer as to why it is in the best interest of the parties to settle medical benefits;

(d) statement signed by the claimant to acknowledge the claimant understands which specific medical benefits will terminate upon settlement;

(e) statement signed by the claimant to acknowledge the claimant is on notice and understands that the future medical benefits settled under the agreement may not be covered by secondary healthcare payers such as Medicare, Medicaid, or other health insurers; and

(f) submission of the following completed forms to the department:

(i) "Summary of Settlement of Medical Benefits" form with original signatures by the claimant and the insurer or the insurer's authorized representative; and

(ii) "Petition for Settlement Injury/Occupational Disease Medical Benefits Closed On An Accepted Claim" form with original signatures by the claimant, a witness, and the insurer or the insurer's authorized representative.

(8) The total value of the workers' compensation benefits may be discounted at the current rate established by the department when an insurer calculates a conversion to a lump-sum payment. Only for claims with dates of injury between April 15, 1985 and June 30, 1987, the lump-sum payment may be discounted by 7%, compounded annually.

AUTH: 39-71-203, MCA

IMP: 39-71-741, MCA

REASON: The department is amending this rule to delete all references to death benefits and beneficiaries as 39-71-741, MCA, does not require any particular process for a lump-sum payment following death of a claimant. While the statute addresses agreements to settle claims for all types of benefits with lump-sum payments, the law does not require someone receiving benefits following the death of an injured worker to prove the beneficiary's ability to become self-sustaining.

The 1991 Montana Legislature enacted House Bill 837, which eliminated the requirement that an injured worker demonstrate financial need for a lump-sum payment of permanent partial disability benefits. It is reasonably necessary to amend (1) and (2) to implement the 1991 changes to the law. The amended sections of the rule clarify that a claimant must still prove financial need to qualify for a lump-sum conversion of permanent total disability benefits.

The 2011 Montana Legislature enacted Chapter 36, Laws of 2011 (House Bill 359) and Chapter 167, Laws of 2011 (House Bill 334), that amended the Workers' Compensation Act. It is reasonably necessary to add (7) to this rule to implement the legislation and allow for the settlement of future medical benefits by conversion to a lump-sum payment when the claimant has reached maximum medical improvement. This addition to the rule reasonably requires two written acknowledgments, signed by the claimant, to address the Legislature's concern that the claimant is on notice of the impact of settlement upon claimant's future medical expenses. One acknowledgment documents the claimant's understanding of the exact medical benefits that will terminate upon settlement and the second documents the claimant's understanding that settlement may adversely impact insurance coverage of future treatment needed as a result of the work-related injury.

The proposed addition of (8) is necessary to correctly reflect current law regarding the appropriate amortization rate that may be used when biweekly benefits are converted to a lump-sum payment. The proposed amendment clarifies that the 7% discount in the dollar amount of benefits applies only to claims with dates of injury between April 15, 1985 and June 30, 1987. These changes further implement Senate Bill 281 of 1985 (set amortization discount at 7% per year, compounded annually) and Senate Bill 315 of 1987 (set amortization discount based on the average for U.S. ten-year treasury bills in the previous calendar year).

The department has determined that it is reasonably necessary to prevent confusion or inadvertent oversight to repeat the different requirements for financial

analysis for permanent partial lump-sum conversions and permanent total lump-sum conversions, which are also set forth in ARM 24.29.1203.

24.29.1203 METHODS THE DEPARTMENT WILL APPLY TO EVALUATE INFORMATION PROVIDED (1) ~~In all~~ The department shall deny a petition for a lump-sum conversion requests of permanent total disability unless, the worker or his beneficiary ~~must demonstrate~~ demonstrates that his the worker's ability to sustain himself ~~become~~ financially self-sustaining is more probable with a whole or partial lump-sum conversion payment than with biweekly payments and his the worker's other resources, ~~or the application for a lump-sum conversion will be denied.~~

(2) ~~In permanent total lump-sum conversion requests, if the worker or his beneficiary demonstrates in addition that his ability to sustain himself financially is more probable with a whole or partial lump-sum conversion than with biweekly payments and his other resources, then:~~ The department shall approve a petition for lump-sum conversion of permanent total disability benefits when:

(a) ~~If the~~ The worker or his beneficiary demonstrates that his the worker's financial condition under the lump-sum proposal will not be greater than could have reasonably been expected had the worker not been injured, and the lump-sum ~~will be approved only if it is limited to the unpaid biweekly benefits, assuming interest at 7% per year, compounded annually;~~ and

(b) ~~If the~~ The worker or his beneficiary demonstrates that he the lump-sum proposal will improve his the worker's financial condition ~~with the lump-sum over what could have been reasonably expected had the worker not been injured,~~ and the lump-sum ~~will be approved only if it is limited to the purchase price to the insurer of an annuity that would yield an amount equal to the biweekly benefits payable over the estimated duration of the compensation period.~~

(3) For claims with date of injury between April 15, 1985 and June 30, 1987, all requirements of (2) must be met and the proposed lump-sum amount of unpaid biweekly benefits may be discounted at a rate of 7% per year, compounded annually.

~~(3)(4)~~ If the claimant does not meet the requirements of 39-71-710, MCA, and the estimated duration of the compensation period is the remaining life expectancy of the worker or his beneficiary, the insurer shall determine the remaining life expectancy will be determined by using in accordance with the most recent Life Table: Expectation of Life at Single Years of Age, by Race and Sex: United States, all races, both sexes column, in Vital Statistics of the United States, Volume II-Mortality, Part A, U.S. Department of Health and Human Services, Public Health Service, National Center for Health Statistics.

~~(4) (5)~~ If the difference between the present discounted value of a permanent total disability lump-sum payment and the future value of the biweekly payments is the only ground justification provided for the lump-sum conversion, the department shall deny the lump-sum conversion will be denied petition.

~~(5)(6)~~ The department will shall deny or approve all a lump-sum settlement applications petition within 30 14 days of receipt. If additional information is required to enable a determination on such applications a petition, it will be requested the department shall request the information within the 30 14-day review period. If additional information is not received within 30 days the 14-day review period, the

department shall deny the petition application will be denied on the basis of lack of information.

AUTH: 39-71-203, MCA

IMP: 39-71-710, 39-71-741, MCA

REASON: The 1991 Montana Legislature enacted House Bill 837, which eliminated the requirement that an injured worker demonstrate financial need for a lump-sum payment of permanent partial disability benefits. It is reasonably necessary to amend this rule to implement the 1991 changes to the law. The amended rule further clarifies that a claimant must still prove financial need to qualify for a lump-sum conversion of permanent total disability benefits.

The department is amending this rule to delete all references to death benefits and beneficiaries as 39-71-741, MCA, does not require any particular process for a lump-sum payment following death of a claimant. While the statute addresses agreements to settle claims for all types of benefits with lump-sum payments, the law does not require someone receiving benefits following the death of an injured worker to prove the beneficiary's ability to become self-sustaining.

The proposed addition of new (3) will clarify that the 7% discount may only be applied to claims with dates of injury within the two-year period authorized by law. The amendment will address the significant confusion regarding the period in which the discount applied.

The department determined it is reasonably necessary to add a reference to 39-71-710, MCA, in both (4) and the implementation cites, to address confusion regarding the estimated duration of benefits prior to retirement age. The statute provides that when claimants retire, insurer liability ends for disability benefits except temporary total, impairment awards, and medical benefits.

In Senate Bill 348, the 1997 Montana Legislature limited the time to 14 days for department review of a petition for lump-sum conversion of permanent total disability benefits. The department is amending (6) to align with the law.

24.29.1404 DISPUTED MEDICAL CLAIMS (1) through (3) remain the same.

(4) The rule of privileged communication is waived by the injured worker seeking benefits under the Workers' Compensation or Occupational Disease acts Act.

AUTH: 39-71-203, MCA

IMP: ~~39-71-203~~, 39-71-704, MCA

REASON: The department is amending this rule to delete an erroneous reference to the Occupational Disease Act, since the statutes were merged into the Workers' Compensation Act in 2005. The department is amending the implementation cites to accurately reflect all statutes implemented through the rule.

24.29.1702 REHABILITATION PANELS FOR CLAIMS BETWEEN JULY 1, 1987 and JUNE 30, 1991 (1) This rule only applies to services provided to claimants with dates of injury between July 1, 1987 and June 30, 1991.

(1) though (3) remain the same but are renumbered (2) through (4).

AUTH: 39-71-203, MCA

IMP: 39-71-1015 through 39-71-1019, MCA (1987)

REASON: The 1991 Montana Legislature enacted House Bill 837 and repealed 39-71-1012, 39-71-1015 to 39-71-1019, 39-71-1023, 39-71-1024, and 39-71-1026, MCA, regarding occupational rehabilitation services provided to injured workers through rehabilitation panels. Because the law in effect at the time of a work-related injury determines an injured worker's statutory rights to rehabilitation services, the department determined it is reasonably necessary to amend this rule to clarify the rule's application only to services provided to claimants with dates of injury between July 1, 1987 and June 30, 1991. The pertinent statutes governing the provision of rehabilitation services were enacted by the 1987 Legislature and remained in effect until repealed in 1991.

24.29.1721 PAYMENT OF REHABILITATION EXPENSES FROM THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FOR CLAIMS ARISING BEFORE JULY 1, 1991 (1) and (2) remain the same.

(3) For claims arising on or after July 1, 1991, payment of rehabilitation expenses is the responsibility of the insurer.

AUTH: 39-71-203, MCA

IMP: Title 39, chap. 71, part 10, MCA (1987) (1989) and (1991)

REASON: The Industrial Accident Rehabilitation Account is only available for services to claimants whose date of injury occurred before the enactment of significant statutory changes to Title 39, chapter 71, part 10 by the 1991 Montana Legislature through House Bill 837. The department is amending this rule to clarify that since the effective date of the 1991 legislation, the responsible party for payment of a claimant's rehabilitation benefits is the insurer when the date of injury occurred after July 1, 1991.

24.29.3802 ATTORNEY FEE REGULATION (1) This rule is promulgated under the authority of 39-71-203, ~~and 39-71-613, and 39-71-2905,~~ MCA, to implement regulation of the fees charged to claimants by attorneys in workers' compensation cases as provided in 39-71-613, MCA.

(2) An attorney representing a claimant on a workers' compensation claim shall submit to the ~~division~~ department within 30 days of undertaking representation of the claimant, in accordance with 39-71-613, MCA, on forms supplied by the ~~division~~ department, a contract of employment stating specifically the terms of the fee arrangement. An attorney substituting for another attorney previously representing a claimant must submit a new contract conforming with this rule within 30 days of undertaking representation of the claimant. The contract of employment shall be signed by the claimant and the attorney, and must be approved by the administrator of the division of workers' compensation or ~~his~~ the administrator's designee. The administrator or ~~his~~ the administrator's designee shall return the

contract to the attorney along with a notification that the contract has been approved or disapproved.

(3) through (5) remain the same.

(6) Nothing prevents an attorney from charging a fee below the fee guidelines set forth in (3) and (4). An attorney may reduce the attorney's fee from what was originally established in the approved fee contract without the further approval of the ~~division~~ department.

(7) For good cause shown, the ~~division~~ department may approve a variance providing for fees in excess of the guidelines of fees as set forth in (3) and (4).

(a) remains the same.

(b) If a variance requested under (7)(a) is not approved, an attorney may request that the administrator or ~~his~~ the administrator's designee review the matter and issue ~~his~~ an order of determination pursuant to procedures set forth in ARM 24.29.201, et seq.

(8) ~~Attorneys'~~ Attorney compensation shall be determined by the approved fee arrangement and shall be paid out of the funds received in settlement or recovery or other funds available to the claimant. Upon the occurrence of a hearing before the workers' compensation court or the supreme court, the workers' compensation court shall have exclusive jurisdiction for the award of ~~attorneys~~ attorney's fees on the claim against the insurer or employer, which shall be credited to the fee due from the claimant.

(9) In the event a dispute arises between any claimant and an attorney relative to attorney's fees in a workers' compensation claim, upon request of either the claimant or the attorney or upon notice of any party of a violation of 39-71-613, MCA, or this rule, the ~~administrator or his designee~~ workers' compensation court shall review the matter and issue ~~his~~ an order resolving the dispute ~~pursuant to procedures set forth in ARM 24.29.201, et seq.~~ The fee contract shall must clearly identify the rights granted by this subsection.

(10) The ~~division~~ department retains its authority to regulate the attorney fee amount in any workers' compensation case according to the factors set forth in 39-71-613, MCA, and ~~subsection (7)(a)~~ of this rule even though the contract of employment fully complies with 39-71-613, MCA, and this rule.

(11) remains the same.

(12) If an attorney violates a provision of 39-71-613, MCA, this rule, or an order fixing an attorney's fee, ~~he~~ the attorney shall forfeit the right to any fee which ~~he~~ the attorney may have collected or have been entitled to collect.

AUTH: 39-71-203, MCA

IMP: 39-71-225, ~~and~~ 39-71-613, 39-71-2905, MCA

REASON: The proposed rule amendment is necessary to bring the rule into conformity with *Pinnow v. Montana State Fund and Halverson, Sheehy & Plath, P.C.*, 2007 MT 322, ¶ 35, 340 Mont. 217, 172 P.3d 1273, in which the Montana Supreme Court held that the workers' compensation court is the appropriate forum for resolving attorney fees disputes described by this rule. The Court further declared that jurisdiction over attorney fee disputes was effectively conferred by the Legislature to the workers' compensation court by 39-71-2905, MCA.

The department is updating the language of this rule to comply with the Code Commissioner's instructions to refer to the "division of worker's compensation" as the "department," meaning the "department of labor and industry." The rule is also amended to conform with the requirements for gender-neutral language in Montana's administrative rules.

4. The department proposes to repeal the following rule:

24.29.1204 FURTHER STUDIES MAY BE REQUIRED

AUTH: 39-71-203, MCA

IMP: 39-71-741, MCA

REASON: The department determined that it is reasonably necessary to repeal ARM 24.29.1204 as unnecessary since the provisions of this rule are currently set forth in other administrative 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: Barbara Gullickson, Department of Labor and Industry, 1805 Prospect, Helena, Montana, 59601; telephone (406) 444-6541; fax (406) 444-4140; or e-mail bgullickson@mt.gov, and must be received no later than 5:00 p.m., April 25, 2013.

6. Caroline Holien, Department of the Labor and Industry, Hearings Bureau, has been designated to preside over and conduct this hearing.

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

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

9. The department has complied with the bill sponsor notice requirements of 2-4-302, MCA. The primary bill sponsors were contacted on November 28, 2012, by electronic mail. The department also solicited comments from various stakeholders and provided an informal two-week comment period. The department considered the comments received prior to finalizing the proposed rule amendments.

/s/ Darcee L. Moe
Darcee L. Moe
Rule Reviewer

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

Certified to the Secretary of State March 18, 2013.

BEFORE THE BOARD OF FUNERAL SERVICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.147.402 mortician	)	PROPOSED AMENDMENT,
application, 24.147.403 inspections,	)	ADOPTION, AND REPEAL
24.147.405 examination, 24.147.406)	
federal trade commission regulations,)	
24.147.501, 24.147.502, 24.147.504,)	
and 24.147.505 licensing, 24.147.901)	
sanitary standards, 24.147.902)	
disclosure statement on embalming,)	
24.147.903 transfer or sale of)	
mortuary license, 24.147.2101)	
continuing education requirements,)	
24.147.2102 sponsors, 24.147.2301)	
unprofessional conduct, the adoption)	
of NEW RULE I mortuary branch)	
establishment, and the repeal of ARM)	
24.147.301 continuing education)	
definitions, 24.147.503 conditional)	
permission to practice, 24.147.506)	
renewal of cemetery license,)	
24.147.1501 branch facility,)	
24.147.2108 and 24.147.2109)	
continuing education, 24.147.2302)	
through 24.147.2305 unprofessional)	
conduct, and 24.147.2401 complaint)	
filing)	

TO: All Concerned Persons

1. On April 18, 2013, at 2:00 p.m., a public hearing will be held in room 471, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Funeral Service (board) no later than 5:00 p.m., on April 12, 2013, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394, Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdfnr@mt.gov.

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

24.147.402 ORIGINAL MORTICIAN LICENSE - APPLICATION ~~(1) Any person applying to the board for permission to take the examination shall present to the board evidence in the form of:~~

(1) An applicant for licensure as a mortician shall submit a completed application form provided by the department, the application fee, and the following documents in order to receive permission to take the jurisprudence examination:

(a) a certified copy of the transcript of completion of 60 semester credit hours or, if courses are offered on a quarter calendar, 90 quarter credit hours sent directly to the board office from a college or university accredited by a regional accrediting agency recognized by the U.S. Department of Education;

(b) a diploma and certified copy of the final transcript, sent directly to the board office from an accredited a college of mortuary science accredited by the American Board of Funeral Service Education (ABFSE) or its successor, demonstrating an associate degree and credit hours obtained in addition to those obtained under (1)(a);

(c) properly a completed application internship agreement on a form furnished provided by the department; and

(d) a certified copy of the certification form verifying successful completion of the International Conference of Funeral Service Examining Board's Board ("Conference") examination sent directly to the board office from the Conference.

~~(2) All applications for licensure by the board will be considered nonroutine in nature and will be reviewed and approved by the board prior to issuance of the license.~~

(2) No credits used to satisfy the credit hours in (1)(a) may be used to satisfy the credit hours in (1)(b).

(3) A diploma and certified transcript demonstrating a baccalaureate degree from an ABFSE or successor accredited college of mortuary science will serve to meet the requirements of (1)(a) and (b).

(4) Upon submission of all required information and successful completion of the jurisprudence examination, mortician applicants shall qualify to receive a mortician intern license. In order to receive an unrestricted mortician's license, interns must submit an additional application on a form provided by the department and provide evidence of successful completion of the internship requirements as set forth in ARM 24.147.504.

(5) Applicants having served their internship in another state shall complete the application form for a mortician license and submit documentation of completion of an internship substantially equivalent to Montana internship requirements.

(6) Board staff may issue licenses in cases of routine applications. The board will review all complete nonroutine applications received by the board office at least three working days prior to the board meeting.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-101, 37-19-302, 37-19-303, MCA

REASON: In addition to grammar and style changes intended to improve clarity, other amendments to this rule will help address confusion and clarify the education requirement, the timing of the jurisprudence examination as it relates to the internship license, and the board's direction to staff to process routine license applications.

First, the legislative history of 37-19-302, MCA, demonstrates a shift between more and less strict requirements. For example, language in the 1981 statute allowed experience to stand in lieu of education. In 1985, this experience equivalency was removed and language was added to emphasize the need to obtain post-secondary general education credits beyond those obtained toward an associate degree in mortuary science. Even since that attempt, the board has continued to interpret the statute variably; most recently, by demanding only an associate's degree without any other secondary education. The board determined that amending this rule is reasonably necessary to clearly describe the intent of having the greater amount of education rather than the lesser amount, and to clarify to applicants the board's licensing requirements, which the board asserts are necessary to provide a well-rounded education and increase professionalism among its regulated licensees.

Other changes are necessary to clarify the overall application process and timing of the jurisprudence examination to occur prior to internship. The board is specifying that transcripts and certification documents must come to the board office directly from the school or responsible entity, to align with current internal processes. Finally, the amendments are necessary to direct staff to process routine applications, help control board costs, and allow those applicants who present routine applications to begin work more quickly. The board is adding (7) to provide a deadline by which nonroutine applicants must submit their completed applications in order to be placed on the board agenda. This amendment is reasonably necessary to further streamline the board's meetings and licensure processes.

24.147.403 MORTUARY TRANSFERS, INSPECTIONS, AND TEMPORARY PERMITS ~~(1) An annual inspection fee as stated in ARM 24.147.401 shall be charged to each licensed mortuary and shall be included in the mortuary annual renewal fee.~~

~~(2) A mortuary shall be inspected by the board or its designees in accordance with subchapter 9 of these rules.~~

~~(3) A mortuary shall be inspected if its location has changed.~~

~~(4) The board shall be notified within 30 days prior to moving or opening a new mortuary so arrangements can be made for inspection prior to opening.~~

~~(5) Reinspection shall be made of a mortuary that does not meet the requirements of the board in ARM 24.147.901.~~

(1) Upon receipt of a completed application for a new mortuary license and accompanying fee, the department shall inspect the mortuary for compliance with board laws and rules.

(a) Except as provided in (3), a "new" mortuary, for the purposes of this rule, includes newly constructed mortuaries and existing mortuaries acquired by new owners, whether by sale or devise.

(b) Except upon issuance of a temporary license, the new mortuary may not operate until the board deems the mortuary and its operations to be in substantial compliance with board laws and rules after review of the application and inspection report.

(c) The applicant may apply for and receive a temporary license from the department provided there is no reason to deny the license under 37-1-316, MCA, or board rules defining unprofessional conduct. The mortuary may operate under the temporary permit until the board grants a license or issues an interim summary suspension order if warranted, or final order to deny it.

(d) The department inspector shall provide a written inspection report to the licensee in charge of the mortuary and to the board office.

(e) The licensee in charge of the mortuary shall submit to the board office a written response to all items of noncompliance no later than ten business days after the inspection.

(f) The board shall review all new mortuary applications, all inspection reports indicating noncompliance, and any responses to the inspection at the next regularly scheduled board meeting after the inspection. For good cause, the board may request a reinspection; the costs of which shall be paid by the applicant prior to issuance of a permanent license.

(2) A mortuary under new ownership shall comply with the notification provisions at ARM 24.147.903 and provide a signed statement of relinquishment of license from the previous owner.

(3) The owner of a mortuary may transfer a mortuary license to a different mortuary and maintain the same license number only when terminating services at the former mortuary, upon submission of an application for transfer with the new information pertaining to the mortuary and applicable fees.

(a) The same process for obtaining a temporary permit, inspection, and approval set forth in (1)(b) through (f) applies to applications for a mortuary transfer.

(b) In the case of license transfers, staff shall link the license history of the former mortuary location to the new mortuary location.

(4) The department shall conduct annual mortuary inspections with or without advanced notice for compliance with board laws and rules, following the same steps outlined in (1)(d) through (f), except that the screening panel will review reports of significant noncompliance referred to it by the board, and determine whether further investigation or disciplinary action is warranted.

AUTH: 37-1-131, 37-19-202, 37-19-403, ~~75-10-1006~~, MCA

IMP: ~~37-19-402~~, 37-19-403, 37-19-703, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: The board determined it is reasonably necessary to amend this rule throughout and address confusion among staff and licensees between license transfers, which are very limited in their nature, and other types of transactions regarding the sale and purchase or other acquisitions of funeral businesses. The new language will also distinguish the different types of facility transfers and assignments, the points in time at which the department will inspect a facility, the different types of inspections, and to whom the inspections apply, and will clearly set

forth a procedure for processing adverse inspection findings. Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.147.405 EXAMINATION (1) ~~The licensing examination shall be required of morticians is the national board examination~~ National Board Examination of the Conference of Funeral Service Examining Boards.

(2) ~~In and in addition, an applicant for licensure as a mortician or a mortician intern shall take and pass, with a grade of 75 percent or higher, a jurisprudence examination covering the statutes and rules under Title 37, chapter 19, MCA, pertinent portions of Title 46, chapter 4, MCA, relating to county coroner's duties, Title 50, chapter 15, MCA, relating to vital statistics and the rules of the Montana state Department of Public Health and Human Services covering registration of deaths, embalming, transportation, disposition of dead human bodies, and funeral directing.~~

~~(2) A grade of 75 percent must be obtained to pass the statutes and rules examination.~~

AUTH: 37-19-202, MCA

IMP: 37-19-302, 37-19-303, MCA

REASON: The board is proposing only grammar and style amendments to this rule to clarify that the examinations required for licensure apply to only morticians and not to crematory operators, crematory technicians, or cemetery permit holders. The amendments also clarify the board requires two separate examinations: a national examination and the jurisprudence examination.

~~24.147.406 FEDERAL TRADE COMMISSION REGULATIONS (1) A licensed mortician in Montana shall comply with all Federal Trade Commission (FTC) regulations governing the pricing of funeral services and funeral goods and the method of paying for funeral services, as defined in a manner and a form in compliance with Federal Trade Commission Funeral Industry Practice Rules, 16 CFR 453 (1997) which are hereby incorporated by reference. A copy of the written statement of compliance shall be kept by the mortuary for a period of three years. The FTC rules are available at the board office, 301 South Park, P.O. Box 200513, Helena, MT 59620-0513.~~

(1) For the purpose of defining unprofessional conduct, the board adopts and incorporates by reference the Federal Trade Commission (FTC) Funeral Industry Practice Rules, 16 CFR 453 (1997), known as "the funeral rule," which, in general, requires those who meet the FTC definition of "funeral provider" to furnish price information and make other affirmative disclosures to consumers. The FTC rules are available from the FTC web site at www.ftc.gov or at the board office at 301 South Park Avenue, P.O. Box 200513, Helena, MT 59620-0513.

(2) The "funeral rule" applies to any licensed person or licensed entity providing both "funeral goods" and "funeral services," as those terms are defined by

the federal regulations and apply to both pre-need and at-need funeral arrangements.

(3) Licensees shall immediately report to the board any citations the licensee receives from the FTC.

(4) Price lists and completed Statements of Funeral Goods and Services Selected shall be maintained and available for inspection for three years from the date of the arrangement conference, rather than one year as contemplated by the FTC.

AUTH: 37-1-136, 37-19-202, 37-19-403, MCA

IMP: 37-1-136, 37-19-403, MCA

REASON: The board is amending this rule to clarify that the FTC "funeral rule" applies to more licensees than just morticians. This clarification is necessary because a "funeral provider," as that term is defined in the federal regulations, includes anyone who sells funeral goods and funeral services and therefore may include cemetery permit holders selling opening and closings, or other burial-related merchandise, and crematory operators selling urns.

Further, rather than referring to the FTC rules as governing "pricing" and "method of paying" for funeral services, the amendments propose to describe more specifically the overall purpose of the "funeral rule." Incorporation of the rules by reference will assist licensees and the public to refer to the rules themselves to determine their scope and applicability. The board determined it is reasonably necessary to add (3) and require that licensees report to the board any FTC violations as unprofessional conduct. The board concluded that learning of these kinds of violations late, sometimes years after their occurrence, contributes to a difficult and inefficient disciplinary process.

The board is removing the substantive provision in (1) referring to "a copy of the written statement of compliance," instead clarifying in new (4) that the State's record retention requirement, unchanged at three years, is greater than that set forth in the FTC rules. Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.147.501 LICENSURE OF OUT-OF-STATE APPLICANTS (1) Upon submission of a completed application containing the affirmations in (2) and (3) of this rule and payment of the proper license fee, the board staff may issue a license to a person ~~who if~~, at the time of application;

(a) the applicant holds a current, active license in good standing, as a funeral director, mortician or crematory operator, issued by the proper authority of any state. When a person applies for licensure under this provision, the applicant shall provide information from the other state(s), and the board shall determine whether the requirements for obtaining such other license(s) are substantially equivalent to or stricter than the requirements of Montana law, as listed in ARM 24.147.402 and 24.147.1114 and 37-19-302 and 37-19-703, MCA. in another state to practice under a funeral services scope of practice recognized in Montana;

(b) the applicant has a license based on standards in another state substantially equivalent to Montana; and

(c) there is no reason to deny the license under 37-1-137 and 37-1-316, MCA, or board rules defining unprofessional conduct, or for staff to determine the application to be nonroutine.

(2) ~~Verification~~ As provided by 37-1-304, MCA, the applicant shall affirm whether the applicant has requested verification of the applicant's current license or licenses in good standing shall be requested by the applicant to be sent directly to the board office from the all other state states in which the licensee holds or has ever held any type of professional or occupational license.

(3) "License" shall mean only those granted by other states under statutory provisions.

(4) A completed application form shall be required from the applicant to initiate consideration for licensing.

(3) The applicant shall affirm whether the applicant has been actively engaged in the practice during the period of licensure in another state. If not so actively engaged, the board may require the applicant, as part of a notice of proposed board action, to take continuing education or undergo supervised practice for a period of time to ensure competency.

(5) (4) All applicants for licensure under this rule shall be required to must pass a the Montana jurisprudence examination, ~~on Montana laws and rules, administered by the board.~~

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-137, 37-1-304, 37-1-316, 37-19-302, 37-19-703, MCA

REASON: The proposed changes will clarify the process set forth in 37-1-304, MCA, regarding licensing out-of-state applicants. Given the accessibility of other states' rules and laws, it is no longer necessary to require an applicant under these circumstances to provide copies. It is preferable that staff obtain accurate and current statutory or regulatory language setting forth the qualifications directly from the web site of the state in question. The board determined that adding the requirement of an active practice component for out-of-state applicants is necessary to ensure the applicant's current competency and further the public's protection. Implementation cites are amended to accurately reflect all statutes implemented through the rule.

24.147.502 INACTIVE STATUS AND ACTIVATION CONVERSION TO ACTIVE STATUS (1) A licensee person holding an individual license may ~~place the license on request~~ inactive status by either indicating on the renewal form that ~~inactive status is desired~~, or by informing the board office, in writing, that ~~an inactive status is desired~~, and paying the appropriate fee. ~~It is the sole responsibility of the~~ The inactive licensee to must keep the board informed as to of any change of address during the period of time the license remains on inactive status. Inactive licensees must pay the inactive renewal fee annually to maintain license status avoid expiration or termination of the license.

~~(a) A mortician, funeral director, crematory operator, or crematory technician who has maintained valid licensure in the state of Montana for a period greater than 49 years may request that their license be placed on inactive "emeritus" status. An inactive emeritus licensee will be exempt from payment of any fee for annual renewal of their inactive license; but all other provisions and procedures relating to inactive status and reinstatement to active status will apply. The board, at its discretion, may provide other recognition or distinction for emeritus licensees.~~

~~(2) A licensee may not practice any as a mortician, funeral director, intern, crematory operator, or crematory technician work in the state of Montana while the license is in an inactive status.~~

~~(3) Upon application written request and payment of the appropriate fee, the board staff may activate approve a request to convert an inactive license to an active status if the applicant does each of the following:~~

~~(a) signifies to the board, in writing, that upon issuance of the active license, the applicant intends to be an active practitioner in the state of Montana;~~

~~(b) (a) presents satisfactory evidence that the applicant has attended six hours of approved continuing education which comply with the continuing education rules of the board for each year or portion of a year that licensee has been inactive, not to exceed 12 hours;~~

~~(c) remains the same, but is renumbered (b).~~

~~(d) (c) successfully completes a Montana state rule jurisprudence examination, if the applicant has been on inactive status for more than five years.~~

~~(4) The board may issue a notice of proposed board action to grant conditional permission, not to exceed one year, allowing the applicant to practice while obtaining the required continuing education hours set forth above. No extension of the one year conditional practice permission shall be granted a probationary license to a practitioner who has been inactive for more than five years, and require up to one year of supervised practice by a licensed mortician, including the embalming and preparation of at least five bodies.~~

AUTH: 37-1-131, 37-1-319, 37-19-202, MCA

IMP: 37-1-319, MCA

REASON: The board is amending the title and text of this rule to prevent confusion between converting inactive licenses to active status and what "reactivate" means in 37-1-141, MCA, regarding lapsed and expired licenses. The board determined it is reasonably necessary to distinguish between individual and mortuary licenses by use of the term "person" in (1), because licensed facilities are not subject to continuing education requirements.

The board is clarifying in (1) that inactive licensees must annually submit an inactive status renewal fee to avoid license expiration or termination, since inactive status does not permit actual practice. The board is eliminating (1)(a) regarding "emeritus" status, because the status is not statutorily recognized or authorized.

The board proposes to delete (3)(a), because the board cannot require that licensees actual practice in their licensed fields. In (3)(b), it is unnecessary to internally define "continuing education" as the term is substantively defined elsewhere.

The board is deleting the conditional permission language from (4) to align with the repeal of ARM 24.147.503 in this notice. The board determined it is reasonably necessary to clarify in (4) that licensees converting to active status after five years inactive may be issued a probationary license to include supervised practice. The board has a duty to ensure active licensees are qualified to safely perform their professions and has concluded that a period of inactivity greater than five years may equate to a loss of competency that this amendment will help address. The remaining changes will improve grammar and clarity throughout the rule.

24.147.504 MORTICIAN INTERNSHIP ~~(1) The registered intern must complete all of his internship in the state of Montana and must report any change of sponsoring mortician within ten days to receive credit towards the 12 months internship.~~

(1) An applicant for a mortician internship shall make application as provided at ARM 24.147.402. To qualify for a regular mortician's license, the intern shall complete the requirements set forth in this rule. The board shall recognize internships served in other jurisdictions that are substantially equivalent to the internship requirements in this rule.

~~(2) To qualify, an~~ An intern must be a full-time an employee at a licensed mortuary under the supervision of a licensed mortician and assist in the complete funeral (embalming, dressing, arrangement of funeral) of at least 25 bodies over a period of at least one year, but no more than three years after passing the jurisprudence examination.

~~(a) (3) At least In order to receive credit, an intern must serve for a continuous six months -month period of the internship period must be served under the supervision of the same licensed mortician.~~

~~(3) An intern may apply to the board for special consideration~~ The board may waive this requirement in cases involving closure of firm, hardship due to illness or death of supervising mortician, illness of intern, or such other emergency that may occur.

~~(4) Internship must be completed within three years of passing the examination.~~

(4) The intern and supervisor each shall report to the board any change of sponsoring mortician within ten days.

~~(a) (5) If after a three-year period~~ three years from passing the jurisprudence exam, the internship has not been completed, the intern may apply for reexamination of state law and rules, and upon passing, begin his the internship anew.

~~(b)~~ No credit will be given for prior time served in an internship.

~~(5) (6) An intern mortician may perform all the duties and functions of a licensed mortician, as allowed and directed by the supervising mortician, who remains responsible.~~ Despite the supervising mortician having responsibility for the professional actions of the intern, as prescribed in Title 37, chapter 1, MCA, the board may take action to revoke, suspend, or discipline an intern license.

~~(a) "Supervision" has the meaning set forth in 37-19-101, MCA, and means the extent of oversight required in the judgement of the supervisor, considering the~~

circumstances of that a mortician believes an intern requires, based upon the intern's training, experience, judgment judgment, and professional development of the intern. At a minimum, the term requires the supervisor, or in limited absences of the supervisor, a delegated licensed mortician to be available for consultation on all client-related activity performed by the intern, and requires direction, observation, and evaluation on a regular basis.

(b) Failure to appropriately supervise an intern may result in disciplinary action against the supervising mortician.

AUTH: 37-1-131, 37-19-202, MCA

IMP: 37-1-131, 37-19-101, 37-19-302, 37-19-304, MCA

REASON: The title is clarified to demonstrate that the only authorized internship is that of a mortician's internship. The board is amending this rule throughout for clarification of internship requirements and improved grammar and style, including replacing gender-specific terms with gender-neutral language.

The board determined it is reasonably necessary to amend (1) to allow recognition of internships served in other jurisdictions. The 2003 Legislature enacted Senate Bill 109 which deleted the requirement that a mortician's internship be completed entirely in Montana.

The board is amending (2) and (5) to address confusion by clarifying that the examination referred in the internship process is the jurisprudence examination. The board is deleting from (2) the "full-time" employment requirement to allow part-time employees to qualify for internships. The board recognizes that in a rural state where business may fluctuate greatly, employers may wish to hire employees at less than full-time over the three-year maximum internship period.

The board is amending (3) to clarify that the board intends for the six-month period under a single mortician supervisor to be a continuous period with no break in service. In conjunction with allowing part-time interns, the board concluded that requiring interns to serve an uninterrupted six months will enhance continuity in the internship and help ensure the sponsor is able to adequately ascertain the true skill level of the intern.

The board is amending (4) to require both the intern and the supervisor to notify the board of a change in sponsor. The board believes both are responsible for internship record accuracy and to ensure that internship requirements are met. The board notes that interns tend to be mobile, and as such may leave the state and the internship abruptly, and may fail to inform the board of the change.

The board determined it is reasonably necessary to amend new (6) by clarifying that failure to supervise an intern constitutes unprofessional conduct and that the board reserves the right to take action against the intern's license. The board concluded that the current rule language seems to disavow this authority of the board to regulate licensees in the interest of protecting the public. The board is amending (6)(a) to specify the board's expectations regarding what constitutes adequate supervision to provide an intern proper experience and ensure that a qualified licensee is available to assist the public at all times.

Implementation cites are amended to accurately reflect all statutes implemented through the rule.

24.147.505 RENEWALS (1) ~~Renewal notices will be sent~~ The department will renew licenses as specified in 37-1-141, MCA, ARM 24.101.408, 24.101.413, and 24.101.414.

~~(2) All licenses, whether individual or establishment, with the exception of cemeteries, must be renewed pursuant to 37-1-141, MCA. The renewal date is set by ARM 24.101.413.~~

~~(3) Renewals that are in any manner incomplete on receipt by the department will be returned to the licensee for completion and resubmission. To be considered complete, the renewal must:~~

~~(a) be accompanied by the appropriate renewal fee. Checks returned to the department for any reason will be returned to the licensee for payment. The license will be considered not renewed until proper payment is received;~~

~~(b) include an affidavit of continuing education if required for the license being renewed as specified in ARM 24.147.2101; and~~

~~(c) be accompanied by any other material or documentation the board may require for renewal as identified on the renewal notice.~~

~~(4) Completed renewals submitted to the board after the date specified in ARM 24.101.413 shall be considered late and subject to a late penalty fee as specified in ARM 24.101.403.~~

~~(5) The provisions of ARM 24.101.408 apply.~~

(2) The renewal date for cemeteries is a five-year period set by 37-19-814, MCA. A "five-year period" means every five years beginning on July 1, 2000. The department will not prorate the application or license fee of newly issued licenses obtained prior to the expiration of a five-year period.

AUTH: 37-1-141, 37-19-202, 37-19-301, MCA

IMP: 37-1-141, 37-19-301, 37-19-814, MCA

REASON: The board is amending this rule to avoid unnecessarily repeating or inadvertently misquoting any of the requirements found elsewhere in statute and rule pertaining to renewals. It is necessary to define "five-year period" regarding cemetery renewal licenses to clarify that the five-year period is not a "rolling" five-year period that begins for each new license, but rather a static five-year period. The amendment further specifies that the department does not prorate fees paid, even if paid just prior to the beginning of a new five-year period. Licensure fees must be commensurate with the costs of processing the particular license, and it is irrelevant at what point in time they are received during a renewal period. Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.147.901 MORTUARY OPERATION SANITARY STANDARDS - PREPARATION ROOM (1) The A preparation room shall be maintained in a clean and sanitary condition at all times- and meet the following minimum requirements:

~~(2) The floors and walls of such room shall have tile, concrete or other nonporous materials covering the floor from wall to wall so that the preparation room may be kept in a sanitary condition at all times.~~

~~(3) Preparation rooms shall contain only the articles, facilities and instruments necessary for the preparation of dead human bodies.~~

~~(4) Such preparation room shall be equipped with proper sewerage, waste disposal and drainage facilities and systems.~~

~~(5) The doors and windows of the preparation room shall be constructed so as to obstruct any view from the outside, properly screened and must provide proper ventilation for the room.~~

~~(6) All tables, hoppers, sinks, receptacles, instruments and other appliances in such rooms shall be thoroughly cleansed and disinfected immediately at the conclusion of each operation.~~

~~(7) The preparation room shall be strictly private and clearly so labeled on each door by a sign reading "private," or "authorized personnel only" or "no admittance." No one shall be allowed in the room while a dead human body is being prepared except persons authorized by a licensed mortician.~~

~~(8) Waste and refuse shall be disposed of in a sanitary manner. Infectious wastes and sharps must be stored for disposal and disposed of in accordance with Title 75, chapter 10, part 10, MCA.~~

(a) tile, concrete, or other nonporous, washable material covering the walls and floor, from wall-to-wall, in a manner to allow cleaning and disinfection of these surfaces;

(b) no articles other than those necessary for the preparation of dead human bodies;

(c) privacy coverings on doorways and windows that prevent viewing of the room or its contents;

(d) restricted access to persons authorized by a licensed mortician and a clearly labeled entrance as "private," "authorized persons only," or "no admittance";

(e) proper ventilation in accordance with Occupational Safety and Health Administration's (OSHA) Formaldehyde Standard 29 CFR 1910.1048;

(f) tables, hoppers, sinks, receptacles, instruments, or other appliances thoroughly cleansed and disinfected immediately at the conclusion of each preparation;

(g) infectious wastes properly labeled and disposed of through a commercial disposal entity, in accordance with Title 75, chapter 10, part 10, MCA;

(h) preparation room effluents discharged via a sewage connection to publicly owned treatment works (POTW), or, if not connected to a POTW, a groundwater discharge permit, or evidence from an applicable county regulator or state Department of Environmental Quality that a groundwater discharge permit is not required; and

(i) hand washing facilities and signs requiring all personnel to wash hands during and after handling any nondisinfected object or material.

(2) The preparation of human remains for final disposition, such as washing, disinfecting, embalming, removing hazardous implants, dressing, and casketing must only be performed in a preparation room of a licensed mortuary or mortuary branch with a preparation room.

(3) Unless requested by a consumer making the initial contact to make funeral arrangements at a place other than the mortuary or mortuary branch, funeral arrangements, both pre- and at-need, may only be performed in a licensed mortuary or mortuary branch.

(4) The mortuary shall designate a mortician-in-charge of the mortuary and within ten days provide written notice to the board of any change in the designation.

(5) The mortuary shall display the facility and personal licenses of licensed staff in plain view for members of the public to view. Personal addresses on licenses may be covered.

(6) The mortuary shall obtain and maintain for inspection all applicable local, state, and federal permits or licenses, including, but not limited to, those relating to business, zoning, building codes (including plumbing, electrical, and mechanical), air quality, and water quality.

(7) The mortuary shall conduct staff training in and require the handling and disposal of all medical, hazardous, or infectious waste in accordance with federal, state, and local laws and regulations, including, but not limited to, the OSHA Bloodborne Pathogen Standard, 29 CFR 1910.1030; Hazard Communication Standard, 29 CFR 1910.1200; Personal Protective Equipment Standard, 29 CFR 1910.132; U.S. Department of Transportation Hazardous Material Regulations, 49 CFR Part 171; and Hazardous Waste Management and Infectious Waste Management Acts, Title 75, chapter 10, parts 4 and 10, MCA.

AUTH: 37-19-202, 37-19-403, 75-10-1006, MCA

IMP: 37-19-101, 37-19-402, 37-19-403, 75-10-421, 75-10-1001, 75-10-1002, 75-10-1003, 75-10-1004, 75-10-1005, 75-10-1006, MCA

REASON: The board is amending the title of this rule to reflect the broader content of the rule following the proposed amendments. The board determined it is reasonably necessary to reorganize the bulk of this rule, while generally maintaining the content in (1). Following amendment, the rule may serve as a checklist for a preparation room and will reflect specific requirements of and citations to applicable federal and state regulations to facilitate practitioners and board staff in more intelligently and purposefully complying with such provisions. Recognizing that public health authorities agree that hand washing is a significant method of controlling the spread of infectious disease, the board is adding a new provision on hand washing at (1)(i).

The board is adding (2) to specify what the board has reasonably inferred from the statutes on licensure and regulation of mortuaries: that preparation of human remains for final disposition must take place in a licensed preparation room of a licensed facility. The board is extending this so-called "bricks and mortar" requirement to the sale of at-need and pre-need funeral arrangements in new (3). The amendment provides an exception for physical limitations of certain consumers, while maintaining the prohibition against in-person or door-to-door solicitation of funeral sales.

It is reasonably necessary to add (4) and delineate a current application requirement to declare a mortician-in-charge, and further specify the need to notify the board of change in that position. This addition is necessary to further implement

37-19-402, MCA, ensuring that mortuaries are operated by only licensed morticians or funeral directors, and establish a contact person who is knowledgeable of the operations.

The board is adding (5) to set forth in rule the requirement to post facility and personal licenses. This requirement is a current inspection requirement for all cemeteries and crematories and following amendment, the mortuary rules will parallel the crematory and cemetery rules in this area.

The board is amending this rule to enhance public protection regarding facility safety and hazardous waste. New (6) is added to specify the board's intent that licensed mortuaries obtain and maintain for inspection all applicable local, state, and federal licenses and permits. The board is adding (7) to require mortuary staff training on the handling and disposal of medical, hazardous, and infectious waste in accordance with applicable laws and regulations.

Authority and implementation cites are amended to accurately reflect all statutes implemented through the rule and provide the complete sources of the board's rulemaking authority.

24.147.902 DISCLOSURE STATEMENT ON EMBALMING (1) ~~A licensed mortician shall include a statement on written contract materials intended for the public as to the conditions under which embalming is required, which statement shall be in accordance with Department of Public Health and Human Services rules on embalming. As required by the FTC Funeral Rule, all funeral providers shall add the following statement next to the price for embalming on the funeral provider's General Price List (GPL):~~

~~(2) The following language shall be included with the requirement of (1): "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial."~~

(2) Except as authorized by a state or local health officer, health regulations set forth at ARM Title 37, chapter 116, part 1, require either refrigeration or embalming after certain periods of time during which the body will be en route during transportation. A funeral provider that has refrigeration must give the consumer the option of either refrigeration or embalming.

AUTH: 37-19-202, MCA

IMP: 37-19-315, MCA

REASON: The FTC requires this verbatim statement on embalming, which presently omitted the term "certain." The board is amending (1) to follow the FTC suggestion that the statement be placed on the General Price List, rather than on "written contract materials," which is vague. The amendment alerts practitioners and board staff of the FTC requirements. The board is amending (2) to address the requirement at 37-19-315, MCA, for the board to provide by rule, "complete information regarding the need for embalming."

24.147.903 TRANSFER NAME CHANGE, CLOSURE, OR SALE OF MORTUARY LICENSE FACILITY (1) Upon the transfer or sale of a mortuary, the original license number may be retained by the mortuary facility upon written request to the board.

(1) In addition to the provisions of ARM 24.147.403 applicable to mortuaries, a licensee or manager in charge of a mortuary, crematory, or cemetery shall notify the board office within ten days of any change of a business name, closure, relocation, sale, or other change in ownership. When there is a change of ownership, the existing license is void and a new license must be obtained from the board.

~~(2) Whenever ownership is transferred outside existing ownership of any mortuary, cemetery or crematory, the mortuary, cemetery or crematory shall notify the board. A change in ownership, for purposes of this rule, shall be deemed to occur whenever more than 50 percent of the equitable ownership of a mortuary facility is transferred in a single transaction, or in a related series transaction, or in a related series of transactions to one or more persons, associations, or corporations. The notice shall specify the address of the principal offices of the mortuary, and whether it will be changed or unchanged, and shall specify the name and address of each new owner and the stockholders.~~

~~(3) Notice of such a~~ A new owner of a facility shall publish, for a one-week period, a notice of the change of ownership shall be published in a newspaper of general circulation in the county in which the mortuary facility is located, within 30 days of the change of ownership. The notice shall specify contain only the following information under the title "Notice of Change of Ownership":

(a) the name and physical address of the principal offices of the mortuary facility, whether particularly noting if the name and physical address have changed;

(b) or unchanged, and shall specify the name and address of each new owner and each stockholder owning more than 5 percent of the stock of each new owner. if sole proprietor or partnership;

(c) if the new owner is a corporation, the name of the corporation, its registered agent, and registered agent's address, if different than the physical address; and

(d) the name of the licensee in charge.

AUTH: 37-19-202, 37-19-403, MCA

IMP: 37-19-402, 37-19-403, MCA

REASON: The board is amending (1) to clearly delineate the requirements for all licensed facilities to notify the board office within ten days of facility name change, closure, or sale. The board determined that receiving timely information on these changes will assist the board in maintaining accurate data used in the inspection and regulation of the licensed facilities. The board is amending (1) to no longer allow the same license number to be transferred between facilities. This amendment will implement 37-19-402(6), MCA, providing that mortuary licenses can only be transferred if the proprietor of the facility terminates services at one facility, and then commences services at a different facility.

The board determined it is reasonably necessary to amend this rule and clarify that the notice of new facility ownership must be published for seven days. The board concluded that a week-long publication would provide the public with adequate, timely notice of such a change. The board is deleting the requirement that the notice contain information about the names and addresses of stockholders as it is overly burdensome and lacks substantial relation to public health, safety, or welfare. Instead, the rule is amended to require information that consumers may find useful and that allows the opportunity to make further inquiry.

Implementation cites are amended to accurately reflect all statutes implemented through the rule.

24.147.2101 CONTINUING EDUCATION REQUIREMENTS (1) ~~The basic requirement for continuing education shall be completion of~~ Morticians with active licenses, beginning with their first full year of licensure, shall complete a minimum of 12 clock hours of approved continuing education in a two-year period, beginning July 1, with a maximum carry-over from one year to the next of six hours minimum of three hours addressing the FTC funeral rule, federal or state regulations governing safety and sanitation of funeral services practice, board rules governing funeral trusts, or funeral services ethics.

~~(2) Each licensee in this state shall sign an affidavit stating that he/she has completed a minimum of six clock hours of continuing education courses, which affidavit shall be submitted as a part of his or her renewal application.~~

~~(a) (2) Compliance with the requirements of continuing education is a prerequisite for license renewal as evidenced by the renewal applicant's affirmation on his or her renewal form, subject to random audit.~~

~~(3) Hours of continuing education credit may be obtained by attending and participating in continuing education courses, workshops, seminars or other activities meeting the requirements herein.~~

~~(4) (3) The Except as provided in ARM 24.147.2102, the board/staff will not preapprove continuing education programs courses or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensees to select quality programs that contribute to their knowledge and competence which also courses which meet these qualifications the criteria set forth in this rule.~~

~~(a) (4) The To be approved, continuing education program courses must meet the following criteria:~~

~~(i) (a) The activity must have significant intellectual or practical content. The activity must as its primary objective the protection of the health, safety, and welfare of the public, and deal primarily with substantive funeral service issues. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to his or her role as a mortician. A continuing education program is defined as a class, institute, lecture, conference, or workshop. The following types of continuing education courses must require passage of a test following completion of the course: home study, cassette, videotape or activity delivered by other means the scope of practice, professional conduct, or ethical obligations of the license held. The board shall not allow credit for courses where the principal purpose of the~~

course is to promote, sell, or offer goods, products, or services to funeral providers, or to promote the personal interests of the licensees;

~~(ii) (b) The activity itself must be conducted or written by an individual or group qualified by practical or academic experience; and~~

~~(iii) (c) All acceptable continuing education courses must provide the licensee with documentation of successful program completion and attendance, containing at least the following information including:~~

~~(i) full name and qualifications of the presenter presenter;~~

~~(ii) title of the presentation attended;~~

~~(iii) number of hours and date of each presentation attended;~~

~~(iv) name of sponsor; and~~

~~(v) description of the presentation format.~~

~~(b) Implementation for continuing education shall be as follows:~~

~~(i) One continuing education credit shall be granted for each hour of participation in the continuing education activity. A maximum of three credits per year by cassette, videotape or tested home study will be allowed.~~

~~(ii) No continuing education is required for morticians renewing their license for the first time.~~

~~(5) The board may accept hours from other organizations not listed in ARM 24.147.2102 if the course meets the criteria in (4).~~

~~(6) Funeral service board members may receive continuing education credit by attending a regularly scheduled board meeting.~~

~~(7) Licensees may receive continuing education credit by attending a regularly scheduled board meeting.~~

~~(8) Licensees may earn up to three hours per year by self-study, audio, video, internet-based, or other activity as long as the licensee passes a test on the materials as evidenced by a certificate of completion.~~

~~(iii) (9) The board will may randomly audit ~~40~~ ten percent of the licensed morticians licenses held by persons subject to the continuing education requirement each year and require. Audited the selected licensees must to provide copies of completion certificates to the board as verification of compliance by the renewal deadline date.~~

~~(A) The board will review these audit reports within six months of their receipt.~~

~~(B) Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance.~~

~~(C) (10) Licensees found to be in noncompliance with the requirement will be asked to submit to the board for approval a plan to complete the continuing education requirements for licensure are subject to disciplinary action against their licenses.~~

~~(D) Prior to the next consecutive year's license renewal deadline, those licensees who were found to be in noncompliance will be formally reviewed to determine their eligibility for license renewal. Licensees, who at this time have not complied with continuing education requirements, will not be granted license renewal until they have fulfilled the board-approved plan to complete the requirements.~~

~~(E) Notices will be considered properly mailed when addressed to the last known address on file in the board office.~~

~~(F) No Licensees may not apply continuing education hours used to complete delinquent continuing education plan requirements for licensure may be used to meet the continuing education requirements for the next continuing education reporting period.~~

~~(iv) if a licensee is unable to acquire sufficient continuing education credits to meet the requirements, he or she may request a waiver. All requests for waiver will be considered by the Board of Funeral Service and evaluated on an individual basis.~~

(11) Upon request of a licensee, the board may grant a waiver for extenuating circumstances of certified illness or undue hardship.

~~(v) (12) It is the responsibility of the licensee to establish and shall maintain detailed records documentation of completion of continuing education compliance (in the form of programs and documentation of attendance) for a period of two years following submission of a continuing education report the renewal cycle in which the hours were reported.~~

~~(5) It is the responsibility of each licensee to finance his or her costs of continuing education.~~

(13) Continuing education credits required by disciplinary order shall not be used to satisfy the biannual requirement.

AUTH: 37-1-319, 37-19-202, MCA

IMP: 37-1-131, 37-1-306, 37-1-319, MCA

REASON: The board is amending this rule throughout to eliminate wordiness and redundancy, eliminate passive voice, and to better organize and simplify the board's continuing education (CE) requirements for morticians. Further amendments add a specific date for the beginning of the audit cycle and eliminate CE carryover to enhance simplicity and effectiveness of the board's random CE audit procedures.

The board is replacing the term "credit" throughout for "hour" as the definition of "credit" as an hour is being deleted from (4)(b)(i). The board is maintaining the new licensee CE waiver from former (4)(b)(ii). A required minimum amount of hours in specific topics, having the greatest impact on consumer safety and welfare, is added to increase the knowledge of these areas by the licensees. The board is deleting (4)(b)(iii)(D) and clarifying renewal provisions in (2), following a department determination that unless the screening panel determines reasonable cause exists to infringe upon a license and the department provides a licensee appropriate notice and opportunity for a hearing, license renewals must be processed.

Former (3) is deleted because its content is superfluous compared to the specific description of course content in new (4). New (3) and (4) are amended to acknowledge that the board does preapprove certain providers of CE courses as long as the coursework meets the content specified by the board. The board intends to narrow the scope of acceptable course content in the amendments to (4) and tie it to the scope of practice as it impacts the public. The board is relocating portions of (4)(a) and (b) regarding method of delivery to new (8), and provisions allowing other organizations to sponsor CE to new (5).

The board is proposing new (6) and (7) to recognize that material covered at a board meeting may meet the content criteria for acceptable CE, but allowing board discretion in approval of such hours. New (8) adds a verification component for claiming self-study hours.

In (9), the board is changing "will" to "may" to allow the board the discretion to suspend an audit if necessary. The time limit for the board to review the audits is deleted because the board reviews such materials at the next regularly scheduled meeting and may table to review materials, which depending on the cooperation of the licensee and the board meeting schedule, may exceed six months. The board is amending the rule further by repealing provisions that allowed an extension to comply with CE, and instead defining the failure to comply with CE as a professional obligation and measure of continuing competency.

The board is proposing new (13) to prohibit "doubling" up on CE hours that are ordered. All references to making renewal contingent on submission of CE certificates are deleted under the prohibition of such practice at 37-1-131(4)(d), MCA. The board is amending former (4)(b)(iv), now new (11), to maintain the board's ability to grant a waiver, but specifying criteria the board will apply in granting waivers to fairly defend discretionary decision-making. Former (5) is deleted as ambiguous and not necessary to clarify that the board does not pay for a licensee's continuing education.

Implementation cites are amended to accurately reflect all statutes implemented through the rule.

24.147.2102 SPONSORS (1) The board will recognize courses, programs or other continuing education activities sponsored by Unless disqualified by action of the board, courses offered by the following providers are approved for continuing education credit:

- (a) Montana Funeral Directors Association (MFDA);
 - (b) Selected Independent Funeral Homes (SIFH);
 - (c) National Funeral Directors Association (NFDA) and state chapters;
Independent Funeral Directors Association (IFDA);
 - (d) Federated Funeral Directors of America, (FFDA);
National Foundation of Funeral Service;
 - (e) Montana Coroner's Association;
 - (f) Order of Golden Rule;
 - (g) Montana Department of Justice coroner's training programs;
Montana Funeral Services, Inc. (MFSI) and funeral industry supplier
programs.
 - (h) American Board of Funeral Service Education (ABFSE) accredited
mortuary science college courses;
 - (i) International Conference of Funeral Service Examining Boards (the
Conference);
 - (j) International Cemetery, Cremation, and Funeral Association (ICCFA); and
 - (k) Cremation Association of North America (CANA).
- (2) All other programs must meet the criteria established in ARM
24.147.2101 as determined by the action of the board.

AUTH: 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The board determined it is reasonably necessary to add ABFSE and ICFSEB as sources of providing acceptable continuing education to provide a diversity of continuing education resources among organizations that are not formed by professional business associations. ICCFA and CANA represent the crematory industry and should also be included. The board is further amending the rule as the National Foundation of Funeral Service merged with NFDA in 1997 and now operates as the Funeral Service Foundation, which does not offer continuing education courses. Additionally, MFSI and IFDA are no longer in existence.

24.147.2301 UNPROFESSIONAL CONDUCT (1) remains the same.

(a) solicitation of dead human bodies by the licensee, ~~his~~ the licensee's agents, assistants, or employees, whether such solicitation occurs after death or while death is impending; ~~providing,~~ that this shall not be deemed to prohibit general advertising;

(b) remains the same.

(c) employment directly or indirectly of any apprentice, agent, assistant, employee, or other person; ~~on part~~ part- or ~~full-time~~ full-time, or on commission; for the purpose of calling upon individuals or institutions for solicitation of dead human bodies for a particular mortuary, mortician, or crematory;

(d) the direct or indirect payment or offer of payment of a commission by the licensee, ~~his~~ the licensee's agent, assistants, or employees for the purpose of securing business for that particular mortuary, mortician, or crematory; provided however, that compliance with a state pre-need law shall not constitute a violation thereof;

(e) remains the same.

(f) allowing the licensee's license number to be placed on a death certificate or any other official form of any dead human body, as the mortician or funeral director, if the licensee did not prepare the body or supervise the final disposition of that body;

(g) using any funeral merchandise previously used, without informing a new consumer or person selecting and/or paying for the use of the merchandise, that the merchandise has been used;

(h) and (i) remain the same.

(j) violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care, transportation, or final disposition of dead human bodies;

(k) and (l) remain the same.

(m) violation of applicable statutes or regulations of the state of Montana or any other state involved with the ~~pre-arrangement~~ prearrangement and/or ~~pre-financing~~ prefinancing of a funeral;

(n) discriminating in services because of race, creed, color, national origin, or medical condition;

(o) remains the same.

- (p) permitting ~~non-licensed~~ nonlicensed personnel to make arrangements for a funeral;
- (q) personnel of a mortuary, crematory, or cemetery whose services are desired shall not recommend auxiliary services or funeral goods, or deprive the consumer the freedom of choice for such services or funeral goods;
- (r) removing or possessing dental gold, dental silver, or any other personal effects, from deceased persons without specific written permission of the authorizing agent;
- (s) attaching, detaining, claiming to detain, or failing to release any human remains or human cremated remains for any debt or demand; or upon any pretended lien or charges upon delivery of authorization for release of remains;
- (t) remains the same.
- (u) failure to comply with statutory or board requirements for pre-need or prepaid arrangements, agreements, or trusts; or failure to disclose any material facts regarding pre-need or prepaid arrangements, agreements, or trusts; or
- (v) in circumstances where there is conflict in direction provided by authorizing agents of equal rank, it shall be considered unprofessional conduct for a licensee to proceed without requiring the parties to either come to agreement, or submit the matter for judicial resolution of the conflict; or
- (w) removal of, embalming, or cremating a dead human body prior to proper authorization from a county coroner or state medical examiner, when the licensee has information connecting crime or violence to the cause of death.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-19-202, MCA
IMP: 37-1-136, 37-1-316, 37-1-319, MCA

REASON: The board determined it is reasonably necessary to relocate the substance of ARM 24.147.2302 to (1)(w) in this rule to set forth a complete list of unprofessional conduct at a single location. The board is repealing ARM 24.147.2302 as two of the statutes previously implemented, 37-19-311, MCA, and 37-19-404, MCA, were repealed in 1995, and the remaining implemented statute is 37-1-136, MCA, authorizing the board to adopt rules specifying grounds for disciplinary action, which is better set forth in this rule.

Implementation cites are amended to accurately reflect all statutes implemented through the rule.

4. The proposed new rule provides as follows:

NEW RULE I MORTUARY BRANCH ESTABLISHMENT (1) A licensed mortuary may operate a branch establishment that meets all of the criteria of a "mortuary" as defined in 37-19-101, MCA, except that the branch mortuary is not required to have a visitation room or preparation room.

(2) If a branch mortuary has no preparation room, no preparation of dead human bodies may occur there and the only authorized activities that may occur include the making of at-need and pre-need funeral arrangements, viewing, and funeral services.

(3) Except as stated in this rule, a branch mortuary is otherwise subject to the same requirements as that of a mortuary.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-19-101, MCA

REASON: The board is adopting this new rule to more appropriately locate the substantive provisions of ARM 24.147.1501, which is proposed for repeal in this notice. The new rule will clarify the relationship between a mortuary and its branch, and the purpose of and authorized activities allowable in a branch mortuary. The new rule will also specify that this branch facility, like a mortuary, is subject to the same types of licensure requirements.

The board notes that the statutory definition of "branch establishment" neither prohibits nor requires the facility to have either "visitation" or "preparation" rooms, which are terms used in the statute, and therefore the rule will not prohibit embalming in a branch mortuary.

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

24.147.301 CONTINUING EDUCATION DEFINITIONS found at ARM page 24-13519.

AUTH: 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The board is repealing this rule and relocating the substance of (1)(a) through (c) in the continuing education rule, ARM 24.147.2101. These terms are not repeatedly used throughout the board rules, and are more appropriately defined within the context of the single rule in which they are used. The term "inactive practitioner" is self-explanatory and is further defined in ARM 24.147.502. Subsection (1)(e) is being stricken for the reasons set forth for the repeal of ARM 24.147.503.

24.147.503 CONDITIONAL PERMISSION TO PRACTICE WHILE ON INACTIVE STATUS found at ARM page 24-13565.

AUTH: 37-19-202, MCA
IMP: 37-19-316, MCA

REASON: The board is repealing this rule because the implemented statute, 37-19-316, MCA, was repealed in 1995. Since a license is either "active" or "inactive," the emergency circumstances anticipated in this rule may only be addressed by a licensed practitioner or one who qualifies to convert from inactive to active status licensure.

24.147.506 RENEWAL OF CEMETERY LICENSE found at ARM page 24-13566.

AUTH: 37-19-814, MCA
IMP: 37-19-814, MCA

REASON: The board is repealing this rule to avoid unnecessarily repeating or inadvertently misquoting any requirements for renewals found elsewhere in statute and rule. The substantive portion of the rule regarding cemetery renewal, which deviates from the general renewal requirements for other licensees is further explained at ARM 24.147.505.

24.147.1501 BRANCH FACILITY found at ARM page 24-13721.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-19-827, 37-19-828, 37-19-829, MCA

REASON: The board is repealing this rule and incorporating its substance into proposed New Rule I, Mortuary Branch Establishment. The board is updating language to align with definition of "branch establishment" at 37-19-101(5), MCA, and amending the title as there is no reference to a branch facility in subchapter nine.

24.147.2108 EXCEPTIONS - NOT ENGAGING IN THE PRACTICE OF FUNERAL SERVICE found at ARM page 24-13904.

AUTH: 37-1-131, 37-1-319, 37-19-202, MCA
IMP: 37-1-306, MCA

REASON: The board is repealing this rule that provides that inactive status licensees are exempt from continuing education requirements. The board determined that this rule contains an inaccurate definition of the "practice of funeral service," which is set forth in statute and unnecessary to be repeated in rule. The obligation to obtain continuing education is clarified to be that of "active" licenses in proposed amendments to ARM 24.147.2101. The board is clarifying the continuing education exemption by setting forth specific conditions licensees must meet to convert to active status in the proposed amendments to ARM 24.147.502.

24.147.2109 PENALTY FOR NONCOMPLIANCE found at ARM page 24-13904.

AUTH: 37-19-202, 37-19-316, MCA
IMP: 37-19-316, MCA

REASON: It is reasonably necessary to repeal this rule, because ARM 24.147.2301 already provides that failure to comply with continuing education requirements may subject the licensee to disciplinary action.

24.147.2302 LICENSEE RESPONSIBILITY IN CASE OF CRIME OR VIOLENCE IN CONNECTION WITH CAUSE OF DEATH found at ARM page 24-13929.

AUTH: 37-1-136, 37-19-202, MCA
IMP: 37-1-136, 37-19-311, 37-19-404, MCA

REASON: See the reasonable necessity statement for the amendment of ARM 24.147.2301.

24.147.2303 FREEDOM OF CHOICE RIGHTS OF NEXT OF KIN AND FAMILY found at ARM page 24-13929.

AUTH: 37-1-136, 37-19-202, MCA
IMP: 37-1-136, 37-19-311, 37-19-404, MCA

REASON: The board is repealing this rule as two of the statutes implemented through this rule, 37-19-311, MCA, and 37-19-404, MCA, were repealed in 1995. The remaining implemented statute, 37-1-136, MCA, authorizing the board to adopt rules specifying grounds for disciplinary action, is implemented elsewhere in board rule. The delineation of the rights of next of kin to direct final disposition, is now contained in the Montana Right of Disposition Act of 2009 codified at 37-19-901, MCA, et seq.

24.147.2304 UNLAWFUL PRACTICE found at ARM page 24-13930.

AUTH: 37-1-136, 37-19-202, MCA
IMP: 37-1-136, 37-19-311, 37-19-404, MCA

REASON: The board is repealing this rule as it unnecessarily repeats the law regarding the requirement to have a license to practice legally and contains an incorrect statement of the law as it extends "title" protections to all licensees. "Funeral director" is the only title protected in Title 37, chapter 19, MCA.

24.147.2305 SCREENING PANEL found at ARM page 24-13930.

AUTH: 37-19-202, MCA
IMP: 37-1-307, MCA

REASON: It is reasonably necessary to repeal this rule because the provision for the chairperson to appoint the screening panel for each individual complaint contradicts 37-1-307, MCA, which requires the board to appoint the screening panel. Further, requiring that the board chair serve on the screening panel limits flexibility needed in cases of conflict, when the chair or other members are unavailable, or in other unforeseen circumstances.

24.147.2401 COMPLAINT FILING found at ARM page 24-13941.

AUTH: 37-1-131, 37-19-202, MCA
IMP: 37-1-307, 37-1-308, 37-1-309, MCA

REASON: The board is repealing this rule because (1) repeats 37-1-308(1), MCA, but only in part and is therefore misleading. Section (4) repeats 37-1-136(2), MCA, for disciplinary actions and 37-1-137, MCA, for applications. Sections (2), (3), and (5) are procedural guidelines governed by statute and division policy. Except in cases where the uniqueness of a particular profession demands different treatment, it is preferable that the complaint procedure is standard among all boards in the division. These procedures were unnecessarily placed in the specific board rules, thus creating the potential for confusion among staff who follow division guidelines and licensees who consult this rule.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Funeral Service, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdfnr@mt.gov, and must be received no later than 5:00 p.m., April 25, 2013.

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

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

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

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

BOARD OF FUNERAL SERVICE
RICHARD (DICK) J. BROWN, MORTICIAN 396
CHAIR

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

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

Certified to the Secretary of State March 18, 2013

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

In the matter of the amendment of) AMENDED NOTICE OF PUBLIC
ARM 37.30.101, 37.30.102,) HEARING ON PROPOSED
37.30.405, 37.30.730, 37.30.1001,) AMENDMENT
37.30.1002, 37.30.1401, and)
37.31.201 pertaining to updates to)
the disability transitions program)

TO: All Concerned Persons

1. On March 14, 2013 the Department of Public Health and Human Services published MAR Notice No. 37-628 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 326 of the 2013 Montana Administrative Register, Issue Number 5.

2. There was a typographical error made pertaining to the time given for the public hearing for this rulemaking. The time of the public hearing was given as 11:00 p.m. but the correct time is 11:00 a.m. on April 3, 2013. The notice of hearing, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

3. On April 3, 2013, at 11:00 ~~p.m.~~ a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

4. The rules remain as proposed in the original notice of public hearing.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., April 11, 2013.

/s/ Shannon L. McDonald
Shannon L. McDonald
Rule Reviewer

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

Certified to the Secretary of State March 18, 2013.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the repeal of ARM) NOTICE OF PUBLIC HEARING ON
38.2.5031 pertaining to Public Utility) PROPOSED REPEAL
Executive Compensation)

TO: All Concerned Persons

1. On April 23, 2013, at 2:00 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room at 1701 Prospect Avenue, Helena, Montana, to consider the proposed repeal of the above-stated rule.

2. The Department of Public Service Regulation 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 Public Service Regulation no later than 5:00 p.m. on April 16, 2013, to advise us of the nature of the accommodation that you need. Please contact Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; TDD/Montana Relay Service (406) 444-4212; or e-mail asolem@mt.gov.

3. The department proposes to repeal the following rule:

38.2.5031 PUBLIC UTILITY EXECUTIVE COMPENSATION (1) If the commission is in possession of executive compensation information, the commission will not afford proprietary, confidential treatment to the compensation of the three highest-paid, Montana-based employees. Total compensation includes, but is not limited to base salary, short-term (annual) incentive plan benefits, long-term incentive plan benefits, stock options, any supplemental benefit plans and perquisites, and compensation from the public utility affiliates of their executive management personnel in Montana. The total compensation information of the three highest-paid, Montana-based utility employees will not be protected from public disclosure through issuance of a protective order by the commission. If a public utility or a public utility employee contends that the circumstances of the privacy of an employee's particular compensation warrants issuance of a protective order despite the wording set forth above, the utility or employee may seek issuance of a protective order and set forth the circumstances that may justify issuance of such an order.

(2) Adoption of this rule does not preclude the commission from seeking and securing other information from regulated businesses.

AUTH: 69-3-103, MCA

IMP: 69-3-102, 69-3-106, 69-3-201, 69-3-203, 69-3-330, MCA

REASON: The Public Service Commission seeks repeal in order to resume its previous practice of considering on a case-by-case basis whether compensation information should be public information or protected as confidential. Through the PSC's protective order procedure set forth in existing administrative rules, public utilities and employees may seek a protective order and the commission will consider each request on a case-by-case basis, weighing the unique factors presented by each case.

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: Aleisha Solem, Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6170; fax (406) 444-7618; or e-mail asolem@mt.gov, and must be received no later than 5:00 p.m., April 26, 2013.

5. The commission, a commissioner, or a duly appointed presiding officer may preside over and conduct the 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, do not apply.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

/s/ W.A. (BILL) GALLAGHER
W.A. (Bill) Gallagher
Chairman
Public Service Regulation

Certified to the Secretary of State March 18, 2013.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On January 31, 2013, the Board of Public Education published MAR Notice No. 10-64-261 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 82 of the 2013 Montana Administrative Register, Issue Number 2.

2. The board has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

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

Certified to the Secretary of State March 18, 2013.

BEFORE THE BOARD OF PUBLIC EDUCATION
OF THE STATE OF MONTANA

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

TO: All Concerned Persons

1. On January 31, 2013, the Board of Public Education published MAR Notice No. 10-66-264 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 84 of the 2013 Montana Administrative Register, Issue Number 2.

2. The board has adopted the following rules as proposed.

NEW RULE I	ARM 10.66.110	NEW RULE VI	ARM 10.66.115
NEW RULE II	ARM 10.66.111	NEW RULE VII	ARM 10.66.116
NEW RULE III	ARM 10.66.112	NEW RULE VIII	ARM 10.66.117
NEW RULE IV	ARM 10.66.113	NEW RULE IX	ARM 10.66.118
NEW RULE V	ARM 10.66.114		

3. The board has repealed the above-stated rules as proposed.

4. The following comments and testimony were received.

COMMENT 1: A commenter stated that she was in favor of the change from general equivalency diploma (GED) to high school equivalency (HSE). She stated it was a simple change that provided for options as to the test.

COMMENT 2: Margaret Bowles, Adult Basic Education and Literacy Specialist from the Office of Public Education, testified at the hearing that by adopting these rules Montana was in a good position to consider assessments from different vendors.

RESPONSE: The board thanks the commenters for their input and appreciates their support of the new rules.

/s/ Peter Donovan
Peter Donovan
Rule Reviewer

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

Certified to the Secretary of State March 18, 2013.

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

In the matter of the amendment of) NOTICE OF ADOPTION AND
ARM 24.11.204, 24.11.452A,) AMENDMENT
24.11.454A, 24.11.455, 24.11 457,)
24.11.475, and 24.11.485, and the)
adoption of New Rule I, pertaining to)
unemployment insurance)

TO: All Concerned Persons

1. On December 20, 2012, the Department of Labor and Industry published MAR Notice No. 24-11-270 pertaining to a public hearing on the proposed amendment and adoption of the above-stated rules at page 2534 of the 2012 Montana Administrative Register, Issue Number 24. On January 31, 2013, the department published MAR Notice No. 24-11-270 pertaining to a second public hearing on the above-stated rules at page 102 of the 2013 Montana Administrative Register, Issue Number 2.

2. On January 18, 2013, a public hearing was held. No members of the public attended the hearing and no oral or written comments were submitted. No written comments were received during the comment period. On February 21, 2013 a second public hearing was held. No members of the public attended the hearing and no oral or written comments were submitted. No written comments were received during the comment period.

3. The department has amended ARM 24.11.204, 24.11.452A, 24.11.454A, 24.11.455, 24.11 457, 24.11.475, and 24.11.485 as proposed.

4. The department has adopted New Rule I (ARM 24.11.472) as proposed.

/s/ Mark Cadwallader
Mark Cadwallader
Rule Reviewer

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

Certified to the Secretary of State March 18, 2013.

BEFORE THE DEPARTMENT OF LIVESTOCK
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT
ARM 32.4.201, 32.4.301, 32.4.601,)	
32.4.701, 32.4.1301, 32.4.1302,)	
32.4.1303, and 32.4.1309 pertaining to)	
to identification of, inspection of,)	
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)	

TO: All Concerned Persons

1. On January 31, 2013, the Department of Livestock published MAR Notice No. 32-13-230 regarding the proposed amendment of the above-stated rules at page 104 of the 2013 Montana Administrative Register, issue number 2.

2. The Department of Livestock has amended the above-stated rules exactly as proposed.

3. No comments or testimony were received.

DEPARTMENT OF LIVESTOCK

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

/s/ George H. Harris
George H. Harris
Rule Reviewer

Certified to the Secretary of State March 18, 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
ARM 37.106.1902, 37.106.1906,)	
37.106.1916, 37.106.1955,)	
37.106.1956, 37.106.1960,)	
37.106.1961, and 37.106.1965, and)	
the repeal of ARM 37.86.2224 and)	
37.86.2225, pertaining to)	
comprehensive school and)	
community treatment program)	
(CSCT))	

TO: All Concerned Persons

1. On December 20, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-621 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 2551 of the 2012 Montana Administrative Register, Issue Number 24.

2. The department has amended ARM 37.106.1902, 37.106.1906, 37.106.1916, and 37.106.1960 as proposed. The department has repealed ARM 37.86.2224, and 37.86.2225 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.

NEW RULE I (37.87.1801) COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: REFERRALS (1) Comprehensive school and community treatment (CSCT) services must be provided as set forth in ARM 37.106.1916, 37.106.1955, 37.106.1956, 37.106.1960, 37.106.1961, and 37.106.1965 in order to receive payment under this program.

(2) Youth referred to the CSCT program must be served in sequential order as determined by the ~~priority order~~ priorities below based upon acuity and need, regardless of payer:

(a) without treatment, the youth ~~is~~ may become at risk of self-harm or harm to others;

(b) the youth requires support for transition from intensive out-of-home or community-based services;

(c) the youth meets the serious emotional disturbance criteria;

(d) the youth has not responded to positive behavior interventions and supports;

(e) the youth is not attending school due to the mental health condition of the youth; or,

~~(f) effective July 1, 2014, the needs and strengths of the youth identified by the child and adolescent needs and strengths (CANS) assessment are such that without mental health services the youth will not be able to make positive behavioral changes.~~

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

NEW RULE II (37.87.1802) COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: CONTRACT REQUIREMENTS (1) and (2) remain as proposed.

(3) The school must identify:

(a) remains as proposed.

(b) the role of the school counselor and the school psychologist, as appropriate, in the provision of mental health services and supports to youth including coordination with the CSCT program; and

~~(c) the space provided and program supports, including telephone, computer access, locking file cabinet(s), and copying, that the school will make available to CSCT staff while providing services within the school; The treatment space provided must be adequate and appropriate for confidentiality, privacy, and the services provided.~~

(d) office space dedicated to CSCT which must be adequate and appropriate for confidentiality and privacy for the services provided; and

(e) treatment space available to CSCT large enough to host a group during both school and nonschool days.

(4) The school and mental health center must specify a referral process to the CSCT program ~~that ensures youth have access to services prioritized according to acuity and need as specified in [NEW RULE I].~~

(5) The school and mental health center must specify an enrollment process that:

(a) includes the CSCT licensed or in-training mental health professional and a school administrator or designee;

(b) ensures youth have access to services prioritized according to acuity and need as specified in ARM 37.87.1801; and

(c) considers the current caseload of the CSCT program in terms of a wait list and near-term discharges.

~~(5)(6)~~ (6) The school must describe the implementation of a school-wide positive behavior intervention and supports program, including, at a minimum, the following procedures:

(a) through (c) remain as proposed.

(6) through (9) remain as proposed, but are renumbered (7) through (10).

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

NEW RULE III (37.87.1803) COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM: REIMBURSEMENT (1) Comprehensive school and community treatment (CSCT) services ~~provided~~ delivered by a licensed mental health center with an endorsement under ARM 37.106.1955 must be billed under the school district's provider number. Mental health services that are provided concurrently with CSCT are billed under the mental health center's provider number. Outpatient therapy codes may not be billed to Medicaid by CSCT staff concurrent with Medicaid for CSCT.

(2) CSCT services may be provided to:

(a) youth ages three through five who are receiving special education services from the public school in accordance with an individualized education program (IEP) under the Individuals with Disabilities Education Act (IDEA) or attending a preschool program offered through a public school; and

(b) remains as proposed.

(3) One team with two full-time employees ~~may bill no~~ will not be reimbursed for more than 720 billing units per team per month. Services must be billed ~~in~~ for the month the service is provided. The licensed or in-training mental health professional must provide at least half of the units billed by the team each month. Billing units are calculated based on the sum total of minutes each professional spent with the youth per day.

(4) Up to 20 CSCT units per youth, per state fiscal year, may be billed for a ~~brief intervention, assessment, or referral and if necessary, referral to other services for youth referred to the CSCT program, regardless of the diagnosis of the youth.~~ There is no limit on the number of youth that may be served. These units must be billed as part of the 720 unit monthly team total.

(5) remains as proposed.

(6) The school district as a Medicaid provider of CSCT is subject to all Medicaid state and federal billing rules and regulations. The school district must:

~~(a) use a sliding fee schedule for youth not eligible for Medicaid;~~

(b) and (c) remain as proposed, but are renumbered (a) and (b).

(7) The school district or the contracted provider must bill for youth not eligible for Medicaid, the school district may use a sliding-fee schedule.

(7) remains as proposed, but is renumbered (8).

~~(8)~~(9) The school district must provide to the department:

(a) a copy of the certification of match documentation as required by the department, annually;

(b) through (d) remain as proposed.

~~(9)~~(10) Failure to provide documentation to the department in accordance with reporting requirements in ~~(8)~~ (9) may result in:

(a) and (b) remain as proposed.

~~(10)~~(11) The school must submit to the department an annual report prepared jointly by the school and the mental health center regarding the effectiveness of the CSCT program as determined in ARM 37.106.1956(9).

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

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

37.106.1955 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT) ENDORSEMENT REQUIREMENTS (1) and (2) remain as proposed.

(3) As of July 1, 2014, the child and adolescent needs and strengths (MT CANS) assessment must be initiated for each youth with serious emotional disturbance (SED) ~~referred to~~ enrolled to receive services in the CSCT program within fourteen calendar days of receipt of a referral ~~assigned~~ signed by the person referring the youth and by a parent or legal representative/guardian of the youth. The MT CANS must be:

(a) through (4) remain as proposed.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1956 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT PROGRAM (CSCT), SERVICES AND STAFFING

(1) The CSCT program must be able to provide the following services, as clinically indicated, to youth as outlined in the individualized treatment plan (ITP):

(a) through (e) remain as proposed.

(f) treatment plan coordination with ~~chemical dependency~~ substance use disorder and mental health treatment services the youth receives outside the CSCT program;

(g) and (h) remain as proposed.

(i) continuous treatment that must be available twelve months of the year.

The program must provide a minimum of ~~four hours per week~~ 16 hours per month of CSCT services in summer months ~~and during winter and spring break.~~

(2) CSCT services for youth with serious emotional disturbance (SED) must be provided according to an individualized treatment plan designed by a licensed or in-training mental health professional who is a staff member of a CSCT program team.

(3) The CSCT ITP team must include:

(a) licensed or in-training mental health professional;

(b) through (6) remain as proposed.

(7) Each CSCT team must include a full-time equivalent mental health professional, who may be ~~an~~ a licensed or in-training mental health professional, as defined in ARM 37.87.702(3). In-training mental health professionals must be:

(a) and (b) remain as proposed.

(8) Each CSCT team must include a full-time equivalent behavioral aide. A behavioral aide must work under the clinical oversight of a licensed mental health professional and provide services for which they have received training that do not duplicate the services of the licensed or in-training mental health professional. All behavioral aides initially employed after July 1, 2013 must have a high school diploma or a GED and at least two years:

(a) through (c) remain as proposed.

(9) The licensed mental health center CSCT program supervisor and an appropriate school district representative must meet at least every 90 days during the time period CSCT services are provided to mutually assess program effectiveness utilizing the following indicators:

(a) and (b) remain as proposed.

(c) CSCT program referrals;

(d) through (f) remain as proposed.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1961 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, RECORD REQUIREMENTS

(1) In addition to any clinical records required in ARM 37.85.414 or elsewhere in these rules, the licensed mental health center's CSCT program must maintain the following records for youth with serious emotional disturbance (SED):

(a) remains as proposed.

(b) a signed verification indicating the parent(s) or legal representative/guardian has been informed that Medicaid requires coordination between CSCT, home support services, and outpatient therapy;

(b) and (c) remain as proposed, but are renumbered (c) and (d).

(d)(e) daily progress notes for each individual therapy session and other direct services provided to the youth and family from each team member that document individual therapy sessions and other direct services provided to the youth and family throughout the day including;

(i) when any therapy or therapeutic intervention begins and ends; and

(ii) the sum total number of minutes spent each day with the youth.

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

(2) In addition to (1), beginning July 1, 2014, youth records must also include the child and adolescent needs and strengths (MT CANS) assessment results.

(3) In addition to any clinical records required in ARM 37.85.414 or elsewhere in these rules, records for youth referred to CSCT regardless of their diagnosis as described in ARM 37.87.1801(4) must include the following:

(a) a written referral, ~~signed~~ signed by the person referring the youth and by the parent(s)/legal representative/guardian, which documents the reason for the referral;

(b) progress notes for each individual therapy session and other direct services provided to the youth and family throughout the day; and

(c) through (4)(b) remain as proposed.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.106.1965 MENTAL HEALTH CENTER: COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (CSCT) PROGRAM, SPECIAL EDUCATION REQUIREMENTS (1) remains as proposed.

(2) The licensed or in-training mental health professional or behavioral aide, as appropriate, must attend the individualized education plan (IEP) meeting when requested by the parent(s)/legal representative/guardian or the school.

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

IMP: 50-5-103, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 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: A few commenters stated that while they are in support of the prioritization of referrals, they are concerned that comprehensive school and community treatment (CSCT) staff is often too busy to respond to crisis calls and that youth exhibiting self-harm or behavior that is harmful to others would be better served by another crisis response mechanism. Another commenter asked about the child and adolescent needs and strengths (CANS) assessment being used to prioritize referrals when the CANS assessment is not completed until the youth is enrolled in CSCT.

RESPONSE #1: The department agrees that requiring CSCT staff to absorb the responsibility of all crisis response in schools is an unreasonable requisite. While schools may choose to engage CSCT staff's expertise in a true emergency if CSCT staff is available, the department will amend the proposed language to reflect that CSCT staff does not respond to crisis needs as part of the referral system. The department will remove the CANS assessment as a requirement for prioritization of referrals. The department is adding "MT" to the acronym "CANS" in order to differentiate the nationwide child and adolescent needs and strength assessment tool from that which has been created specifically for Montana.

COMMENT #2: Many commenters stated they would like New Rule I (ARM 37.87.1801) to require collaboration between the school district and the CSCT program in determining the acuity and needs of the youth and establishing referrals. The commenters stated to rely solely on a contract between the two entities could jeopardize the effectiveness of the referral system and risk missing those youth who are at risk but not displaying outward behavioral problems; collaboration will protect the integrity of the referral process.

RESPONSE #2: The department agrees with the commenters that it would benefit the youth to foster collaboration. The department will amend the requirement in New Rule II (ARM 37.87.1802) to establish a referral process and describe it in the contract, and require collaboration between the licensed mental health professional and the school delegate as part of the enrollment team who will prioritize the referrals.

COMMENT #3: Two commenters stated that the proposed New Rule I (ARM 37.87.1801) appears to require CSCT programs provide "free care," which is not allowed. They asked the department to clarify whether or not the department is now

requiring CSCT programs to provide "free care" for youth who have no funding for CSCT services.

RESPONSE #3: New Rule I (ARM 37.87.1801) does not require CSCT programs to provide free care. New Rule I (ARM 37.87.1801) requires referrals be prioritized according to need, not according to payment source.

COMMENT #4: A commenter stated that they agree that collaboration is critical to determine youth who may qualify for the CSCT program as well as information sharing. However, they are concerned about how proposed New Rule I (ARM 37.87.1801) addresses the circumstances when a program is at capacity and has a wait list.

RESPONSE #4: The department agrees that it is important to take into account current case loads. The department will amend the proposed language in New Rule II (ARM 37.87.1802) to clarify that the enrollment team will consider the CSCT team's entire caseload, evaluating the likelihood of near-term discharges in the context of a waiting list. There may also be times that the enrollment team will have to refer the youth to another service provider.

COMMENT #5: Many commenters argued in favor of more prescriptive rules in regards to transportation and classroom space.

RESPONSE #5: The department believes it is the responsibility of the school and the mental health center to determine contractually the exact nature of the classroom space and the transportation to the program, particularly on nonschool days. However, the department understands that privacy is essential for the CSCT program to function effectively and requires space large enough to accommodate a therapeutic group. Moreover, the provision of a dedicated space to the CSCT program is indicative of a school's willingness to support the CSCT program. The department will amend New Rule II (ARM 37.87.1802) to be more prescriptive regarding the responsibility of the school to provide office space that is private, dedicated to CSCT, and treatment space large enough to host a group of youth during both school and nonschool days.

COMMENT #6: Many commenters disagree with the requirement in New Rule III (ARM 37.87.1803) that one team with two full-time employees may bill no more than 720 billing units per team per month because teams regularly bill more than 720 units. The commenters recommend changing the language to reflect that they are not reimbursed in excess of 720 units per month. One commenter suggested raising the number of reimbursable units to 800 units per month.

RESPONSE #6: The department agrees with this comment and will amend the language to state "reimbursed for more than 720 units" rather than "bill for 720 units." The department does not agree to change the number of reimbursable units. This would require a rate change and rate setting is outside the scope of this rule notice.

COMMENT #7: A few commenters asked the department to expand billable services under the existing 720 unit monthly cap. Among the additional billable service the commenters mentioned were integration, team activities, consultation, coordination, behavior support planning, progress monitoring, and nonface-to-face activities such as family phone therapy.

RESPONSE #7: The original CSCT rate was designed to include coordination services. Rate setting is outside the scope of this rulemaking process.

COMMENT #8: Many commenters asked whether the 20 units for intervention, assessment, and referral are in addition to the 720 reimbursable units allowed each month per team.

RESPONSE #8: The department will amend the rule to state that 20 units are allowed per youth per state fiscal year (July 1 through June 30) who are without a serious emotional disturbance (SED) diagnosis. There is not a limit on the number of youth that may be served but it is not in addition to the 720 reimbursable units per month total. It is optional for the CSCT programs to participate in the intervention, assessment, and referral process for youth who are without a SED diagnosis.

COMMENT #9: Many commenters asked the department to clarify the rationale that the services must be billed in the month the service is provided.

RESPONSE #9: The intent of this language is to convey that units cannot be carried over from a previous month. The department will amend this language.

COMMENT #10: Many commenters asked the department to reconsider the requirement that the therapist provide at least half of the units allowed each month. One commenter suggested this requirement precludes the therapist from taking vacations.

RESPONSE #10: CSCT is a Medicaid mental health service for youth with SED. Although the behavioral aide provides an extremely important component of the service, youth in the service are expected to follow through with a treatment plan that over time, allows them to cope with the symptoms of SED. Ethically, a licensed therapist should lead this effort. Moreover, the service is intended to be comprehensive in scope. The therapist should be seeing most of the youth on his or her caseload regularly for individual and family therapy. ARM 37.106.1956(6) allows the program supervisor to fill in for the therapist for short periods of time giving the therapist flexibility when needed.

COMMENT #11: Many commenters asked the department if the provider of CSCT is the licensed mental health center or the school district.

RESPONSE #11: CSCT can be provided by either a school district that is a mental health center with an endorsement under ARM 37.106.1955 or a school district that contracts with a mental health center with an endorsement under ARM 37.106.1955. Either way, the school is the provider. The department will amend the language to reflect that the school is the provider.

COMMENT #12: Many commenters asked the department to clarify New Rule III (ARM 37.87.1803) regarding the reimbursement requirements for the school district as a Medicaid provider of CSCT. The commenters also asked the department for clarification regarding who submits the billing.

RESPONSE #12: The requirements set forth in New Rule III (ARM 37.87.1803) currently exist in ARM 37.86.2225. ARM 37.86.2225 is being repealed as part of this rule making and relocated into the children's mental health bureau's rule chapter. The department will amend the proposed rule to better reflect reimbursement requirements for the CSCT program. The school district is the provider but who submits the billing for services is left to contractual agreement.

COMMENT #13: Many commenters asked the department to assure that the mental health center provided CSCT services is not responsible for cost recovery as a result of the provider failing to provide annual documentation to the department.

RESPONSE #13: Since the school is the provider of CSCT services and the mental health center is the contractor, indemnification clauses would more properly be in contract than in administrative rule. This request is outside the scope of this rule-making process.

COMMENT #14: Many commenters asked the department to describe the required format and information required in New Rule III (ARM 37.87.1803) for the annual report regarding the effectiveness of the CSCT program. The same commenters also asked the department to amend the rule to require that the report reflect the mutual contributions of both entities for the contents of the report. The commenters also requested the department clarify that "program referrals" mean CSCT referrals.

RESPONSE #14: Since requiring a report on the effectiveness of the program is a new requirement, the department would like to avoid over-prescribing the contents in this first effort at evaluation, in hope that the leeway allowed will lead to some naturally strong examples that could then be shared in a statewide collaborative effort. The department does see the benefit in requiring the mental health center and the school to work together on the report and will amend the proposed rule to require mutual contributions of both the school and the mental health center. The proposed rule will also be amended to reflect that program referrals mean CSCT referrals.

COMMENT #15: One commenter asked the department to be more prescriptive regarding the certification of match documents, noting the schools must provide both a copy of the match certification and a copy of the match worksheet to the Office of Public Instruction annually. The commenter also asked the department to combine the requirements of New Rule III (ARM 37.87.1803) (7) and (8).

RESPONSE #15: The department will amend the rule to state the documentation is required by the department and will provide details regarding the documentation in another venue. The department appreciates the commenter's suggestion to combine New Rule III (ARM 37.87.1803) (7) and (8) but will leave them separate as this is the format preferred by the department.

COMMENT #16: One commenter asked the department to limit the paperwork requirements for brief intervention, assessment, and referral services to ensure that the burden of documentation does not inhibit the use of this service.

RESPONSE #16: Proposed changes to ARM 37.106.1961 require only a signed referral, progress notes, and a discharge plan for the youth. The requirements do not impose an undue burden on providers.

COMMENT #17: One commenter asked the department to amend the requirement for youth ages three to five, that in order to receive services, must attend a publically funded preschool and strike the requirement of an individualized education program (IEP).

RESPONSE #17: The department agrees that it should be acceptable for a student, ages three to five, to receive CSCT services if the student attends a preschool program that is publicly funded. The department will amend the proposed rule language to reflect this change.

COMMENT #18: Many commenters asked whether the proposed rules included in MAR 37-619 for home support services (HSS) and therapeutic foster care will be included in the mental health center definitions as a service and whether or not HSS will require an endorsement.

RESPONSE #18: The comment is outside the scope of this rulemaking process.

COMMENT #19: Many commenters asked for clarification regarding the requirement that the child and adolescent needs and strengths (MT CANS) assessment be initiated within 14 calendar days of a referral.

RESPONSE #19: There is merit in conducting the MT CANS with every referred youth to the CSCT program. However, the department recognizes that requiring the MT CANS assessment on each referral at this point might place an undue burden on the CSCT staff just learning to use this assessment tool. For this reason, the department will amend the proposed rule to require that the MT CANS assessment be initiated for each youth upon enrollment into the program. In a further attempt to clarify, the department will also replace the term CANS with MT CANS.

COMMENT #20: Several commenters asked the department to allow programs to consider other referrals in the absence of a signed or cosigned referral form. The commenters also asked the department who cosigns a referral. One commenter said the referral form is unnecessary.

RESPONSE #20: The department believes that family choice is vitally important in the provision of mental health services. A signed referral signifies that a legal representative is aware that a youth has been referred to the program. The department will amend the proposed rule to state that each referral is to be signed by the person referring the student as well as the legal representative/guardian.

COMMENT #21: Many commenters asked the department which entity is required or allowed to provide family therapy in the instance of a youth receiving concurrent CSCT and HSS.

RESPONSE #21: Medicaid will not pay for duplicative services. HSS and CSCT are both intended to be comprehensive services. When a youth is receiving both services and the family identifies family therapy as a need, it must be received through the agency providing HSS services.

COMMENT #22: Many commenters asked the department to retain the word "addictive" in ARM 37.106.1956(1)(f) and strike the term "chemical dependency."

RESPONSE #22: The department deliberately chose chemical dependency as the term that describes the non-mental health addictive issues that may inflict youth. However, in order to be consistent and up to date with nationally accepted terminology, the department will replace the term "chemical dependency" with "substance use disorders." Other concerns youth may face fall under mental health.

COMMENT #23: Several commenters asked the department to reconsider the requirement that four hours per week of CSCT services must be offered in summer months and during winter and fall break. They also asked the department about the documentation requirements and consequences of not providing this service.

RESPONSE #23: While breaks allotted by the schools are important, it is also important for youth who are actively working on a treatment plan to maintain momentum and have opportunity for therapeutic support. The department will amend the proposed language to specify that the hours can be offered in any combination equal to 16 hours per month to assist with flexibility during summer break. The department will remove the requirement during spring and winter breaks. Maintaining a minimal amount of contact throughout the summer months also assists in youth transitioning back into school in the fall.

COMMENT #24: Numerous commenters asked whether the department would require verification that the parent(s)/legal representative/guardian has been informed that Medicaid requires coordination of CSCT with HSS and outpatient therapy.

RESPONSE #24: The department will amend the proposed language to reflect documentation requirements include a signed verification.

COMMENT #25: Many commenters requested that the department amend the licensure requirements in ARM 37.106.1956(7)(b) regarding that the in-training mental health professional be licensed by the last day of the calendar year following the state fiscal year (July 1 through June 30) in which supervised hours were completed.

RESPONSE #25: The commenter's suggestions focus on the application for licensure as opposed to receipt of a license. This requirement is intended to address in-training practitioners not completing testing requirements rather than a

failure to apply for licensure. Having licensed practitioners adds to the value of the service.

COMMENT #26: Many commenters requested that the department amend ARM 37.106.1956(8) to allow a high school diploma or a GED.

RESPONSE #26: The department agrees with this request and will amend the proposed rule.

COMMENT #27: A few commenters asked the department if, in ARM 37.106.1956(9)(c), the department is seeking information about referrals to the CSCT program.

RESPONSE #27: The department will amend the proposed language to indicate this refers to the CSCT program.

COMMENT #28: One commenter noted that the requirement for full time staff in ARM 37.106.1960(2) was eliminated when the staffing requirements were moved to ARM 37.106.1955. The respondent asked if full time staff is still required.

RESPONSE #28: The department will amend the proposed language in ARM 37.106.1956(7) and (8) to indicate that these positions must be full-time.

COMMENT #29: Many commenters stated that many CSCT programs follow the policy of the school district in which they operate and do not physically restrain youth and asked about training regarding physical restraint.

RESPONSE #29: The department understands that the CSCT program may follow the policy of the school district; however, the licensing requirements for a licensed mental health center involve de-escalation training inclusive of both physical and nonphysical methods.

COMMENT #30: Many commenters asked for clarification regarding training on school culture in ARM 37.106.1960(f).

RESPONSE #30: This will vary by individual school district and is left to the discretion of the provider.

COMMENT #31: Many commenters asked if the department has identified or expects certain progress monitoring techniques in ARM 37.106.1960(3)(d).

RESPONSE #31: The department is leaving specific training up to the provider or employer.

COMMENT #32: Many commenters asked the department to decrease paperwork requirements for CSCT staff wherever possible; several suggestions were noted.

RESPONSE #32: The department agrees with the commenter. A recent federal audit suggests that a provider should total the entire amount of time spent for a day and bill once for the correct number of units. The department will amend ARM 37.106.1961(1)(d) and (3)(b) to reflect daily progress notes. Commenters may refer

to the general Medicaid documentation requirements for additional documentation requirements. This will eliminate the need for a separate note for every time a therapist or aide has contact with a youth.

COMMENT #33: One commenter asked the department to develop a universal referral form.

RESPONSE #33: While the department sees the potential value of a universal form, the inclusion should be discussed for future rulemaking as it is outside the scope of this rulemaking.

COMMENT #34: Many commenters asked the department to consider using the term program therapist whenever the rules would allow the CSCT therapist, who is an in-training professional, to perform a function.

RESPONSE #34: According to ARM 37.106.1902(24), a program therapist means a licensed mental health professional with the training and knowledge to provide psychotherapy. The department will ensure that the rules specify in-training whenever the in-training licensed mental health professional could perform the function.

COMMENT #35: One commenter stated disagreement with the department's fiscal impact statement because he believed the inclusion of intervention, assessment, and referral services would actually decrease the number of teams.

RESPONSE #35: The department disagrees. In cases where teams have a waiting list, the ability to provide 20 units of intervention, assessment, and referral services may actually increase the number of teams.

COMMENT #36: Many commenters said they appreciate the inclusive, coordinated rulemaking process led by the department. One commenter said she appreciated the coordinated effort by the provider coalition to respond to the rules.

RESPONSE #36: The department appreciates the response of stakeholders to the coordinated rulemaking effort.

6. These rule amendments are effective July 1, 2013.

/s/ Kurt R. Moser
Kurt R. Moser
Rule Reviewer

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

Certified to the Secretary of State March 18, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.9.101, 42.9.104, 42.9.105,)
42.9.106, 42.9.111, 42.9.201,)
42.9.401, 42.9.501, 42.9.510,)
42.9.520, and 42.9.530 relating to)
pass-through entities)

TO: All Concerned Persons

1. On December 20, 2012, the department published MAR Notice Number 42-2-891 regarding the proposed amendment of the above-stated rules at page 2578 of the 2012 Montana Administrative Register, Issue Number 24.

2. A public hearing was held on January 14, 2013, to consider the proposed amendment. Mr. Leo Berry, Attorney for the National Association of Publicly Traded Partnerships (NAPTP), appeared and testified at the hearing. Ms. Lindsay Sander, of NAPTP, and Ms. Nancy Higgins Schlepp, President of the Montana Taxpayers Association (MonTax), submitted written comments. The oral and written comments received are summarized as follows, along with the responses of the department:

COMMENT 1: Mr. Berry and Ms. Sander commented on ARM 42.9.106, relative to current language and the proposed amendments. Because the NAPTP has worked proactively with the department for years on a number of issues, and due to the extensive work that has been done, they wish to clarify the intent of the rule, and reinforce comments they made regarding multi-tier pass-through entities when the department proposed rule amendments in 2011.

At that time, it was unclear how the proposed rules impacted publicly traded partnerships (PTPs) and their lower-tier partnerships. PTPs are unable to comply with composite return and withholding provisions required by Montana rules. Section 15-30-3313(7), MCA and the current rules, provide for an exemption for PTPs if certain information is provided to the department annually.

However, ARM 42.9.106 requires the first-tier partnership to file a composite return and withhold from the second-tier partnerships. For some PTPs, the PTP is the second-tier partnership. Despite PTPs having an exemption from the requirements when they are a first-tier partnership, they are not exempted in this scenario. It is not administratively possible to notify the department of ownership changes that occur with the second-tier PTP, as required in ARM 42.9.106(5).

Changes to the existing rule were adopted in November 2011. During that rulemaking, amendments were proposed that allowed the owners of the lower-tier partnership to claim the tax paid as a refundable credit against their tax liability. No Montana statute or rule addressed how the lower-tier pass-through entities of PTPs would be treated in light of the exemption from withholding for the PTP itself. The NAPTP respectfully asserted then, as it does now, that the lower-tier pass-through entities of the PTP should be exempt from withholding under this provision.

Such an exemption would address burdens that occur when a lower-tier

partnership withholds on other lower-tier partnerships, all of which are owned by the PTP. The PTP must then apply to have the withheld tax refunded. One entity pays in only to have the related entity seek the same amount back. This creates an unnecessary burden for both the entities and the department. The NAPTP has approached numerous states regarding this issue, and they have found it appropriate to extend the exemption from withholding to the lower-tier pass-through entities as well as to the PTP.

The proposed rule established a provision that permitted the department to waive the requirement to remit tax or pay composite tax if certain conditions are met. The first condition requires the first-tier pass-through entity to obtain from the second-tier pass-through entity a completed Form PT-STM and file it 45 days prior to the deadline for a first-tier pass-through entity. The NAPTP respectfully submits now, as it did in 2011, that there is no way to make or even encourage a second-tier partnership to file forms with the department, especially in an advanced or accelerated time frame.

The second condition requires an entity to prove to the department that all of its distributive share of Montana sourced income will be fully accounted for through the appropriate income, corporate, and other taxes filed with the state. This places an almost impossible requirement on all entities and shifts the burden of tax enforcement from the department to businesses, which cannot be responsible for the enforcement of the state's tax laws.

The NAPTP considers PTPs to be at the top of an entity's structure pyramid and the partnerships, LLCs, or corporations owned by the PTP to be below, or lower-tier, entities. NAPTP expressed the importance to note this because of historical discussions with the department in which each group had a different understanding of what constitutes a higher- or lower-tier partnership.

The NAPTP respectfully submits that no purpose is served by offering a waiver process to businesses based on conditions that will be difficult if not impossible to achieve. If the department cannot provide an exemption from ARM 42.9.106(2)(b) and (3), the department could amend (7), to also exempt PTPs from the requirements in (2),(3),(4), and (5).

Ms. Schlepp commented that the way the change to the rule is drafted, the exemption for PTPs only applies to those that are first-tier pass-through entities. She stated that MonTax requests amendments to ensure that second-tier PTPs be specifically exempted from ARM 42.9.106(2),(3),(4), and (5). Second-tier PTPs cannot comply with (2)(b) and (3), and establish that its Montana source income is fully accounted for in its unit holders' Montana tax returns. Nor is it administratively possible to notify the department of ownership changes of second-tier PTPs as required in (5). As a rule, lower-tier pass-through entities of PTPs should be exempt from withholding and composite returns.

RESPONSE 1: The department appreciates the comments from Mr. Berry, Ms. Sander, and Ms. Schlepp on this proposed rulemaking action. It is important to distinguish that their comments primarily reference previous amendments made to ARM 42.9.106, in 2011. The proposed amendments in this current rulemaking action do not substantially change the rule. As set forth in the reasonable necessity, the amendments address administrative issues such as a word capitalization and

the removal of outdated references to a discontinued form. The administrative amendments also update the options for submitting forms.

Having recently developed the functionality to receive the Form PT-STM electronically, the department seeks to clarify for taxpayers and preparers that the completed form (electronic or hard copy) need not be submitted to the first-tier entity for filing, but may be sent directly to the department by the second-tier entity, for efficiency. Furthermore, the rule clarifies that regardless of who files the form, the first-tier entity remains responsible for ensuring that the PT-STM is timely filed with the department.

The concerns expressed by Mr. Berry, Ms. Sander, and Ms. Schlepp in regard to ARM 42.9.106 are appreciated. However, the department has determined that their concerns warrant further study and discussion, and should be addressed in a separate rulemaking action, rather than during this biennial rule review housekeeping process.

COMMENT 2: Mr. Berry and Ms. Sander stated that the NAPTP would like to meet with the department, prior to any final rule adoption, to discuss the proposed rules, and Ms. Schlepp expressed an interest in participating in any such meeting.

RESPONSE 2: The requesting individuals arranged for and conducted a meeting with the department, for a general discussion about pass-through entities. The meeting was conducted separately from, and does not have an impact on, this particular rulemaking action. As discussed at the meeting, the department looks forward to working with representatives from NAPTP, MonTax, the MSCPA, and other parties in the interim prior to the 2015 Montana Legislative Session, to address various issues regarding the administration of pass-through entities.

3. The department amends ARM 42.9.101, 42.9.104, 42.9.105, 42.9.106, 42.9.111, 42.9.201, 42.9.401, 42.9.501, 42.9.510, 42.9.520, and 42.9.530 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 March 18, 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 December 31, 2012. This table includes those rules adopted during the period January 1, 2013, through March 31, 2013, 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 December 31, 2012, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2012/2013 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 February 2013 appear. Vacancies scheduled to appear from April 1, 2013, through June 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 March 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 FEBRUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Investments (Commerce)			
Commissioner Kathy Bessette Havre Qualifications (if required): agriculture representative	Governor	Aageson	2/6/2013 1/1/2017
Rep. Mark E. Noennig Billings Qualifications (if required): business person	Governor	reappointed	2/6/2013 1/1/2017
Mr. Jack Prothero Great Falls Qualifications (if required): small business representative	Governor	reappointed	2/6/2013 1/1/2017
Ms. Marilyn J. Ryan Missoula Qualifications (if required): Teachers Retirement System Board member	Governor	Turcotte	2/6/2013 1/1/2017
Pulse Crop Advisory Committee (Agriculture)			
Ms. Leta Campbell Harlem Qualifications (if required): actively involved in the pulse crop industry	Governor	reappointed	2/13/2013 2/13/2015
Mr. Michael Ehlers Oilmont Qualifications (if required): actively involved in the pulse crop industry	Governor	reappointed	2/13/2013 2/13/2015

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Pulse Crop Advisory Committee (Agriculture) cont.			
Mr. Brian Kae	Governor	not listed	2/13/2013
Dagmar			2/13/2015
Qualifications (if required): actively involved in the pulse crop industry			
Mr. Jim Murray	Governor	reappointed	2/13/2013
Froid			2/13/2015
Qualifications (if required): actively involved in the pulse crop industry			
Mr. Jon Stoner	Governor	reappointed	2/13/2013
Havre			2/13/2015
Qualifications (if required): actively involved in the pulse crop industry			
Mr. Grant Zerbe	Governor	reappointed	2/13/2013
Frazer			2/13/2015
Qualifications (if required): actively involved in the pulse crop industry			
State Employee Charitable Giving Campaign Advisory Council (Administration)			
Ms. Marcia Armstrong	Governor	reappointed	2/13/2013
Helena			2/13/2015
Qualifications (if required): representing state employees			
Mr. Bill Crane	Governor	reappointed	2/13/2013
Helena			2/13/2015
Qualifications (if required): federal representative			

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Employee Charitable Giving Campaign Advisory Council (Administration) cont.			
Mr. Matthew Dale Helena Qualifications (if required): representing state employees	Governor	reappointed	2/13/2013 2/13/2015
Mr. Jack Lynch Butte Qualifications (if required): representing state employees	Governor	reappointed	2/13/2013 2/13/2015
Ms. Marie Matthews Helena Qualifications (if required): representing state employees	Governor	reappointed	2/13/2013 2/13/2015
Mr. Rob Mayer Helena Qualifications (if required): representing state employees	Governor	reappointed	2/13/2013 2/13/2015
Ms. Kathy Miller Helena Qualifications (if required): federal representative	Governor	reappointed	2/13/2013 2/13/2015
Mr. Gary Owen Great Falls Qualifications (if required): federal representative	Governor	reappointed	2/13/2013 2/13/2015
Mr. Dave Paton Helena Qualifications (if required): representing state employees	Governor	reappointed	2/13/2013 2/13/2015

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Employee Charitable Giving Campaign Advisory Council (Administration) cont.			
Ms. Gloria Soja Helena	Governor	not listed	2/13/2013 2/13/2015
Qualifications (if required):	representing state employees		
Ms. Mary Wright Helena	Governor	reappointed	2/13/2013 2/13/2015
Qualifications (if required):	representing state employees		
Ms. Kristen Wrzensinski Helena	Governor	not listed	2/13/2013 2/13/2015
Qualifications (if required):	representing state employees		
State Employee Group Benefits (Administration)			
Mr. Christopher Abbott Helena	Governor	not listed	2/13/2013 2/13/2015
Qualifications (if required):	representing state employees		
Mr. Richard Cooley Helena	Governor	reappointed	2/13/2013 2/13/2015
Qualifications (if required):	representing state employees		
Ms. Kelly DaSilva Helena	Governor	reappointed	2/13/2013 2/13/2015
Qualifications (if required):	representing legislative branch agencies		

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Employee Group Benefits (Administration) cont.			
Ms. Mary Dalton Helena Qualifications (if required): representing state employees	Governor	reappointed	2/13/2013 2/13/2015
Mr. Brian Ehli Missoula Qualifications (if required): representing state employee and labor organizations	Governor	reappointed	2/13/2013 2/13/2015
Mr. Russ Hill Helena Qualifications (if required): ex-officio member	Governor	reappointed	2/13/2013 2/13/2015
Sen Jim Keane Butte Qualifications (if required): representing the legislature	Governor	reappointed	2/13/2013 2/13/2015
Mr. John McEwen Helena Qualifications (if required): representing retired state employees	Governor	reappointed	2/13/2013 2/13/2015
Ms. Beth McLaughlin Helena Qualifications (if required): representing state employees	Governor	Berry	2/13/2013 2/13/2015
Mr. Quint Nyman Helena Qualifications (if required): representing state employee and labor organizations	Governor	reappointed	2/13/2013 2/13/2015

BOARD AND COUNCIL APPOINTEES FROM FEBRUARY, 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Employee Group Benefits (Administration) cont.			
Ms. Erin Ricci Helena	Governor	reappointed	2/13/2013 2/13/2015
Qualifications (if required): representing state employee and labor organizations			
Ms. Amy Sassano Helena	Governor	reappointed	2/13/2013 2/13/2015
Qualifications (if required): representing state employees			
State Tax Appeal Board (Justice)			
Rep. Dave McAlpin Missoula	Governor	Flaherty-Settle	2/16/2013 1/1/2019
Qualifications (if required): public representative			
State Tribal Economic Development Commission (Commerce)			
Ms. Cheryl Reeves Browning	Governor	Wells	2/18/2013 6/30/2013
Qualifications (if required): Blackfeet Tribe alternate			
Mr. Roger "Sassy" Running Crane Browning	Governor	Reevis	2/18/2013 6/30/2013
Qualifications (if required): Blackfeet Tribe member			

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Advisory Council on State Workforce Development and Planning (Administration) Sen. Mike Cooney, Helena Qualifications (if required): recommended by Keith Kelly	Governor	6/30/2013
Mr. Tim Reardon, Helena Qualifications (if required): none specified	Governor	6/30/2013
Director Dore Schwinden, Helena Qualifications (if required): none specified	Governor	6/30/2013
Director Mike Ferriter, Helena Qualifications (if required): none specified	Governor	6/30/2013
Director Janet Kelly, Helena Qualifications (if required): none specified	Governor	6/30/2013
Ms. Madalyn Quinlan, Helena Qualifications (if required): recommended by Denise Juneau	Governor	6/30/2013
Ms. Amy Sassano, Helena Qualifications (if required): none specified	Governor	6/30/2013
Mr. Tim Burton, Helena Qualifications (if required): representing agencies of other elected officials	Governor	6/30/2013
Mr. Tom Livers, Helena Qualifications (if required): none specified	Governor	6/30/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Advisory Council on State Workforce Development and Planning (Administration) cont. Mr. Dick Clark, Helena Qualifications (if required): representing statewide IT interests</p>	Governor	6/30/2013
<p>Ms. Lesa Evers, Helena Qualifications (if required): none specified</p>	Governor	6/30/2013
<p>Ms. Jane Smilie, P.O. Box 202951 Qualifications (if required): recommended by Anna Whiting Sorrell</p>	Governor	6/30/2013
<p>Mr. Alan Peura, Helena Qualifications (if required): recommended by Dan Bucks</p>	Governor	6/30/2013
<p>Ms. Arlynn "Arni" Fishbaugh, Helena Qualifications (if required): representing small agencies</p>	Governor	6/30/2013
<p>Board of Hail Insurance (Agriculture) Mr. Jim Schillinger, Baker Qualifications (if required): public member</p>	Governor	4/18/2013
<p>Board of Massage Therapists (Labor and Industry) Ms. Grace Bowman, Billings Qualifications (if required): public representative</p>	Governor	5/6/2013
<p>Ms. Deborah Kimmet, Missoula Qualifications (if required): massage therapist</p>	Governor	5/6/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Massage Therapists (Labor and Industry) cont. Mr. Nick Soloway, Helena Qualifications (if required): massage therapist</p>	Governor	5/6/2013
<p>Ms. Carole Love, Billings Qualifications (if required): public representative</p>	Governor	5/6/2013
<p>Board of Nursing Home Administrators (Labor and Industry) Mr. Thomas Klotz, Glasgow Qualifications (if required): nursing home administrator</p>	Governor	5/28/2013
<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 Plumbers (Labor and Industry) Ms. Donna L. Paulson, Great Falls Qualifications (if required): public representative</p>	Governor	5/4/2013
<p>Board of Real Estate Appraisers (Labor and Industry) Mr. Dennis Hoeger, Bozeman Qualifications (if required): real estate appraiser</p>	Governor	5/1/2013
<p>Ms. Jennifer McGinnis, Polson Qualifications (if required): real estate appraiser</p>	Governor	5/1/2013
<p>M.r Jeffrey Fleming, Huntley Qualifications (if required): public representative</p>	Governor	5/1/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Realty Regulation (Labor and Industry) Ms. Lucinda Willis, Polson Qualifications (if required): real estate salesperson and a Democrat</p>	Governor	5/9/2013
<p>Chief Water Judge (not listed) Mr. C. Bruce Loble, Bozeman Qualifications (if required): none specified</p>	Chief Justice	6/30/2013
<p>Clinical Laboratory Science Practitioners (Labor and Industry) Ms. Alison Mizner, Kalispell Qualifications (if required): clinical laboratory practitioner</p>	Governor	4/16/2013
<p>Commission on Practice of the Supreme Court (Supreme Court) Mr. Jon Oldenburg, Lewistown Qualifications (if required): none specified</p>	elected	6/25/2013
<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

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>County Printing Board (Administration) cont. Commissioner Laura Obert, Townsend Qualifications (if required): county commissioner</p>	Governor	4/1/2013
<p>Electronic Government Advisory Council (Administration) Director Mary Sexton, Helena Qualifications (if required): agency representative</p>	Governor	6/18/2013
<p>Mr. Land Tawney, Missoula Qualifications (if required): public representative</p>	Governor	6/18/2013
<p>Mr. Christian Mackay, Helena Qualifications (if required): agency representative</p>	Governor	6/18/2013
<p>Ms. Karen Harrison, Lolo Qualifications (if required): public representative</p>	Governor	6/18/2013
<p>Commissioner Andy Hunthausen, Helena Qualifications (if required): local government official</p>	Governor	6/18/2013
<p>Grant Review Committee (Commerce) Mr. John Cech, Billings Qualifications (if required): representative of a two-year postsecondary institution</p>	Governor	6/30/2013
<p>Ms. Karen Byrnes, Butte Qualifications (if required): private sector economic development</p>	Governor	6/30/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Grant Review Committee (Commerce) cont. Ms. Linda Kindrick, Clancy Qualifications (if required): representative of private sector economic development</p>	Governor	6/30/2013
<p>Information Technology Managers Advisory Council (Administration) Ms. Margaret Kauska, Helena Qualifications (if required): none specified</p>	Director	6/30/2013
<p>Judicial Standards Commission (Justice) Mr. Victor F. Valgenti, Missoula Qualifications (if required): none specified</p>	Supreme Court	6/30/2013
<p>Judge Gary L. Day, Miles City Qualifications (if required): none specified</p>	elected	6/30/2013
<p>Land Information Advisory Council (Administration) Director Dan Bucks, Helena Qualifications (if required): agency representative</p>	Governor	6/30/2013
<p>Mr. Tim Reardon, Helena Qualifications (if required): agency representative</p>	Governor	6/30/2013
<p>Mr. Lance Clampitt, Bozeman Qualifications (if required): representative of the U.S. Interior Department</p>	Governor	6/30/2013
<p>Mr. Art Pembroke, Helena Qualifications (if required): local government representative</p>	Governor	6/30/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Land Information Advisory Council (Administration) cont. Director Richard Opper, Helena Qualifications (if required): agency representative	Governor	6/30/2013
Ms. Catherine Maynard, Bozeman Qualifications (if required): representative of the U.S. Agriculture Department	Governor	6/30/2013
Mr. Ken Wall, Missoula Qualifications (if required): private sector representative	Governor	6/30/2013
Ms. Annette Cabrera, Billings Qualifications (if required): local government representative	Governor	6/30/2013
Ms. Christiane von Reichert, Missoula Qualifications (if required): university representative	Governor	6/30/2013
Mr. Rudy Cicon, Chester Qualifications (if required): land surveyor	Governor	6/30/2013
Rep. Sue Malek, Missoula Qualifications (if required): agency representative	Governor	6/30/2013
Mr. James D. Clafin, Billings Qualifications (if required): representative of the U.S. Interior Department	Governor	6/30/2013
Mr. Warren Fahner, Troy Qualifications (if required): local government representative	Governor	6/30/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Land Information Advisory Council (Administration) cont. Mr. Dennis McCarthy, Kalispell Qualifications (if required): representative of the U.S. Agriculture Department</p>	Governor	6/30/2013
<p>Mr. Fred Gifford, Helena Qualifications (if required): private sector representative</p>	Governor	6/30/2013
<p>Mr. Johnny Doney, Poplar Qualifications (if required): tribal government representative</p>	Governor	6/30/2013
<p>Ms. Linda Vance, Helena Qualifications (if required): GIS professional</p>	Governor	6/30/2013
<p>Ms. Wendy Thingelstad, Polson Qualifications (if required): GIS professional</p>	Governor	6/30/2013
<p>Library Commission (Higher Education) Ms. Marsha Hinch, Choteau Qualifications (if required): public representative</p>	Governor	5/22/2013
<p>MSU Northern Local Executive Board (University System) Mr. Darrell Briese, Havre Qualifications (if required): public representative</p>	Governor	4/15/2013
<p>Montana Cherry Commodity Advisory Committee (Agriculture) Mr. Oliver Dupuis, Polson Qualifications (if required): none specified</p>	Director	5/3/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Heritage Preservation and Development Commission (Commerce)		
Mr. Randy Hafer, Billings Qualifications (if required): business person	Governor	5/23/2013
Ms. Marilyn Ross, Twin Bridges Qualifications (if required): having experience in historic preservation	Governor	5/23/2013
Mr. Colin Mathews, Virginia City Qualifications (if required): public representative	Governor	5/23/2013
Mr. Philip Maechling, Florence Qualifications (if required): community planner	Governor	5/23/2013
Montana Noxious Weed Management Advisory Council (Agriculture)		
Mr. Jack Eddie, Dillon Qualifications (if required): representative of the Montana Weed Control Association	Director	6/30/2013
Mr. Jim Olivarez, Missoula Qualifications (if required): representative of consumer group	Director	6/30/2013
Mr. Todd Wagner, Glasgow Qualifications (if required): Agriculture crop production representative	Director	6/30/2013
Mr. Jim Story, Corvallis Qualifications (if required): Biological Research and Control representative	Director	6/30/2013
Mr. Jim Gordon, Huntley Qualifications (if required): Herbicide dealer/applicator representative	Director	6/30/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Noxious Weed Management Advisory Council (Agriculture) cont. Ms. Margie Edsall, Sheridan Qualifications (if required): Western Montana counties representative	Director	6/30/2013
Mr. Kurt Myllymaki, Stanford Qualifications (if required): Consumer group representative	Director	6/30/2013
Mr. Dick Zoanni, Sidney Qualifications (if required): Eastern Montana counties representative	Director	6/30/2013
Montana Potato Commodity Committee (Agriculture) Mr. Brad Haidle, Fallon Qualifications (if required): none specified	Director	6/25/2013
Mr. Pat Fleming, Pablo Qualifications (if required): none specified	Director	6/25/2013
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

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana State University - Great Falls College of Technology (Governor) Ms. Joan Bennett, Great Falls Qualifications (if required): public representative	Governor	4/15/2013
Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Roger A. Noble, Kalispell Qualifications (if required): independent petroleum marketing industry representative	Governor	6/30/2013
Mr. Karl Hertel, Moore Qualifications (if required): insurance industry representative	Governor	6/30/2013
Mr. Jerry M. Breen, Choteau Qualifications (if required): independent petroleum marketing industry representative	Governor	6/30/2013
Postsecondary Scholarship Advisory Council (Governor) Ms. Connie Wittak, Flaxville Qualifications (if required): having experience in secondary education	Governor	6/20/2013
Public Employees Retirement Board (Administration) Ms. Dianna M. Porter, Butte Qualifications (if required): public representative	Governor	4/1/2013
Ms. Darcy Halpin, Belgrade Qualifications (if required): retired public employee	Governor	4/1/2013
Small Business Compliance Assistance Advisory Council (Environmental Quality) Ms. Michelle Bryan Mudd, Missoula Qualifications (if required): public representative	Governor	5/5/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Small Business Compliance Assistance Advisory Council (Environmental Quality) cont. Ms. Diana Vanek, Bozeman Qualifications (if required): public representative	Governor	5/5/2013
Mr. Carson Coate, Helena Qualifications (if required): representative of the Department of Environmental Quality	Director	5/5/2013
State Compensation Insurance Fund Board (Administration) Rep. Jane DeBruycker, Dutton Qualifications (if required): policy holder	Governor	4/28/2013
Mr. James Swanson, Glendive Qualifications (if required): insurance producer and a policy holder	Governor	4/28/2013
Mr. Ken Johnson, Missoula Qualifications (if required): representative of private enterprise and a policy holder	Governor	4/28/2013
Mr. Thomas R. Heisler, Great Falls Qualifications (if required): representative of private enterprise and a policy holder	Governor	4/28/2013
State-Tribal Economic Development Commission (Commerce) Rep. Jack Wells, Bozeman Qualifications (if required): representative of the Blackfeet Tribe	Governor	6/30/2013
Mr. Rodney Miller, Wolf Point Qualifications (if required): representative of the Fort Peck Assiniboine & Sioux Tribes	Governor	6/30/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>State-Tribal Economic Development Commission (Commerce) cont. Ms. Cheryl Reevis, Browning Qualifications (if required): representative of the Blackfeet Tribe</p>	Governor	6/30/2013
<p>Mr. Forrest Smith, Poplar Qualifications (if required): representative of the Fort Peck Assiniboine & Sioux Tribes</p>	Governor	6/30/2013
<p>University of Montana (Governor) Ms. Ann Boone, Missoula Qualifications (if required): public representative</p>	Governor	4/15/2013
<p>University of Montana - Helena College of Technology (Governor) Mr. Pat Clinch, Helena Qualifications (if required): public representative</p>	Governor	4/15/2013
<p>University of Montana - Montana Tech (Governor) Mr. Tony Laslovich, Anaconda Qualifications (if required): public representative</p>	Governor	4/15/2013
<p>University of Montana - Western (Governor) Mr. William Kriegel, Dillon Qualifications (if required): public representative</p>	Governor	4/15/2013
<p>Water Judge of the Clark Fork River Basin Water Division (District Court) Judge Ted Mizner, Anaconda Qualifications (if required): none specified</p>	elected	6/30/2013

VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2013 THROUGH JUNE 30, 2013

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Water Judge of the Lower Missouri River Basin Water Division (District Court) Judge David Cybulski, Plentywood Qualifications (if required): none specified</p>	elected	6/30/2013
<p>Water Judge of the Upper Missouri River Basin Water Division (District Court) Judge Jeffrey Sherlock, Helena Qualifications (if required): none specified</p>	elected	6/30/2013
<p>Water Judge of the Yellowstone River Basin Water Division (District Court) Judge Joe L. Hegel, Forsyth Qualifications (if required): none specified</p>	elected	6/30/2013
<p>Western Interstate Commission for Higher Education (Governor) Ms. Sheila Stearns, Helena Qualifications (if required): representative of higher education</p>	Governor	6/19/2013