

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 17

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF EXTENSION OF
ARM 12.11.501, 12.11.3901,) COMMENT PERIOD ON
12.11.3940 and the adoption of NEW) PROPOSED AMENDMENT AND
RULE I regarding recreational use on) ADOPTION
Lake Alva, Harpers Lake, and Lake)
Marshall)

TO: All Concerned Persons

1. On May 9, 2013, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-385 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 755 of the 2013 Montana Administrative Register, Issue Number 9.

2. On June 5, 2013, the commission held a public hearing. The commission is proposing an additional alternative proposed amendment to be considered for Lake Alva. All comments received on the original proposed rule adoption and amendment will be considered and do not need to be resubmitted.

3. The proposed amendment published on May 9, 2013, provided as follows, stricken matter interlined, new matter underlined:

12.11.3901 ALVA LAKE ALVA (1) remains the same.

(2) All watercraft on Alva Lake Alva ~~pulling, taking off with, and landing water skiers will travel in a general, consistent, counterclockwise direction~~ are limited to a controlled no wake speed as defined in ARM 12.11.101.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

4. The proposed alternative amendment provides as follows, stricken matter interlined, new matter underlined:

12.11.3901 ALVA LAKE ALVA (1) remains the same.

(2) All watercraft on Alva Lake Alva ~~pulling, taking off with, and landing water skiers will travel in a general, consistent, counterclockwise direction~~ are limited to a controlled no wake speed as defined in ARM 12.11.101 from the day after Labor Day through July 31.

AUTH: 23-1-106, 87-1-303, MCA
IMP: 23-1-106, 87-1-303, MCA

5. The commission 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 September 13, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Sharon Rose, Fish, Wildlife and Parks, 3201 Spurgin Road, Missoula, MT, 59804; fax 406-542-5529; e-mail shrose@mt.gov, and must be received no later than September 20, 2013.

/s/ Dan Vermillion

Dan Vermillion, Chairman
Fish, Wildlife and Parks Commission

/s/ Zach Zipfel

Zach Zipfel
Rule Reviewer

Certified to the Secretary of State August 26, 2013.

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

In the matter of the amendment of) NOTICE OF PROPOSED
ARM 12.8.702 through 12.8.709) AMENDMENT
pertaining to primitive fishing access)
sites) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On November 27, 2013, the Department of Fish, Wildlife and Parks (department) proposes to amend the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than September 20, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, PO Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

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

12.8.702 PRIMITIVE FISHING ACCESS SITES IN REGION 1 (1) The following sites are designated as primitive fishing access sites within Region 1:

- (a) ~~Ashley Creek;~~
- (b) ~~Beaver Lake;~~
- (c) through (e) remain the same but are renumbered (a) through (c).
- (f) ~~Frank Lake;~~
- (g) remains the same but is renumbered (d).
- (h) ~~Loon Lake-Eureka;~~
- (i) remains the same but is renumbered (e).
- (j) ~~Marle Lake;~~
- (k) ~~Marlowe Springs;~~
- (l) remains the same but is renumbered (f).
- (m) ~~Moran Lake;~~
- (n) ~~Savage Lake;~~
- (o) remains the same but is renumbered (g).
- (p) ~~Spring Creek;~~
- (q) (h) Swan River; ~~;~~
- (r) ~~Whitefish.~~

AUTH: ~~87-1-304~~ 23-1-102, MCA
IMP: ~~87-1-304~~ 23-1-102, MCA

12.8.703 PRIMITIVE FISHING ACCESS SITES IN REGION 2 (1) The following sites are designated as primitive fishing access sites within Region 2:

- ~~(a) Aunt Molly;~~
- (b) through (d) remain the same but are renumbered (a) through (c).
- (d) Forest Cooper;
- ~~(e) Forks;~~
- ~~(f) Harry Morgan;~~
- (e) K. Ross Toole;
- (f) Kohrs Bend;
- (g) through (i) remain the same.
- ~~(j) River Junction;~~
- (j) Schwartz Creek;
- (k) Scotty Brown Bridge;
- ~~(k) Thibodeau;~~
- (l) Tamarack Creek;
- ~~(l) (m) Turah;~~
- ~~(m) Whitaker Bridge.~~

AUTH: ~~87-1-304~~ 23-1-102, MCA

IMP: ~~87-1-304~~ 23-1-102, MCA

12.8.704 PRIMITIVE FISHING ACCESS SITES IN REGION 3 (1) The following sites are designated as primitive fishing access sites within Region 3:

- (a) remains the same.
- ~~(b) Axtell Bridge;~~
- (c) remains the same but is renumbered (b).
- (c) Brogan's Landing;
- (d) remains the same.
- ~~(e) Cherry River;~~
- (f) and (g) remain the same but are renumbered (e) and (f).
- ~~(h) Corwin Springs;~~
- ~~(i) Dewey;~~
- ~~(j) Erwin Bridge;~~
- ~~(k) Fairweather;~~
- ~~(l) Four Corners;~~
- (g) George Grant Memorial;
- (m) through (o) remain the same but are renumbered (h) through (j).
- ~~(p) High Road;~~
- (q) through (v) remain the same but are renumbered (k) through (p).
- ~~(w) Meadow Lake;~~
- ~~(x) Milwaukee;~~
- (y) through (ae) remain the same but are renumbered (q) through (w).
- ~~(af) Sappington Bridge;~~
- ~~(ag) Shed's Bridge;~~
- (ah) remains the same but is renumbered (x).
- ~~(ai) Tizer Lakes;~~
- (aj) remains the same but is renumbered (y).

AUTH: ~~87-1-304~~ 23-1-102, MCA
IMP: ~~87-1-304~~ 23-1-102, MCA

12.8.705 PRIMITIVE FISHING ACCESS SITES IN REGION 4 (1) The following sites are designated as primitive fishing access sites within Region 4: (a) through (h) remain the same.
(i) ~~Mid-Canon~~;
(j) and (k) remain the same but are renumbered (i) and (j).
(l) ~~Table Rock~~;
(m) through (o) remain the same but are renumbered (k) through (m).

AUTH: ~~87-1-304~~ 23-1-102, MCA
IMP: ~~87-1-304~~ 23-1-102, MCA

12.8.706 PRIMITIVE FISHING ACCESS SITES IN REGION 5 (1) The following sites are designated as primitive fishing access sites within Region 5: (a) and (b) remain the same.
(c) ~~Big Rock~~;
(d) through (f) remain the same but are renumbered (c) through (e).
(g) ~~General Custer~~;
(h) ~~Grant Marsh~~;
(i) and (j) remain the same but are renumbered (f) and (g).
(h) South Hills;
(k) ~~Two Leggins~~.
(i) Weymiller.

AUTH: ~~87-1-304~~ 23-1-102, MCA
IMP: ~~87-1-304~~ 23-1-102, MCA

12.8.707 PRIMITIVE FISHING ACCESS SITES IN REGION 6 (1) The following sites are designated as primitive fishing access sites within Region 6: (a) remains the same.
(b) ~~Cole Ponds~~;
(c) and (d) remain the same but are renumbered (b) and (c).

AUTH: ~~87-1-304~~ 23-1-102, MCA
IMP: ~~87-1-304~~ 23-1-102, MCA

12.8.708 PRIMITIVE FISHING ACCESS SITES IN REGION 7 (1) The following sites are designated as primitive fishing access sites within Region 7: (a) ~~Amelia Island~~;
(b) through (e) remain the same but are renumbered (a) through (d).
(f) ~~Joe's Island (adjacent to Intake FAS)~~;
(g) ~~Little Powder River~~;
(h) ~~Myers Bridge~~;
(i) ~~Powder River Depot~~;

(j) and (k) remain the same but are renumbered (e) and (f).

AUTH: ~~87-1-304~~ 23-1-102, MCA

IMP: ~~87-1-304~~ 23-1-102, MCA

12.8.709 DEVELOPMENTS AND IMPROVEMENTS ALLOWED AT FISHING ACCESS SITES (1) through (1)(d) remain the same.

(e) no latrine unless necessary for health and sanitation reasons as determined by the regional park fishing access site manager or the local county sanitarian. Replacement latrines shall be allowed at all sites where latrines presently exist;

(f) through (j) remain the same.

AUTH: ~~87-1-304~~ 23-1-102, MCA

IMP: ~~87-1-304~~ 23-1-102, MCA

REASON: The department is updating the rules for primitive access fishing sites due to the need to correct some of the site names, remove some sites that the department no longer owns, add new sites that have been purchased since the adoption of these rules in 1999, and remove some sites due to improvements that have been made or will be made to address public use patterns.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Montana Department of Fish, Wildlife and Parks, Attn: Primitive FAS Rule, PO Box 200701, Helena, Montana, 59620-0701; fax (406) 444-4952; or e-mail csperry@mt.gov, and must be received no later than October 11, 2013.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Charlie Sperry at the above address no later than October 11, 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 more than 25 based on the number of Montana recreationists.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and

specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, PO Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption of the above-referenced amendments will not significantly and directly impact small businesses.

/s/ M. Jeff Hagener

M. Jeff Hagener
Director
Fish, Wildlife, and Parks

/s/ Aimee Fausser

Aimee Fausser
Rule Reviewer

Certified to the Secretary of State August 26, 2013.

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

In the matter of the repeal of ARM)
37.34.301, 37.34.302, 37.34.306,)
37.34.307, 37.34.308, 37.34.309,)
37.34.310, 37.34.311, 37.34.318,)
37.34.319, 37.34.325, 37.34.329,)
37.34.330, and 37.34.335, pertaining)
to placement determinations)

NOTICE OF PUBLIC HEARING ON
PROPOSED REPEAL

TO: All Concerned Persons

1. On September 25, 2013, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on September 18, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

3. The department proposes to repeal the following rules:

37.34.301 PLACEMENT DETERMINATIONS: PURPOSE is found on page 37-7283 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-203, 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.302 PLACEMENT DETERMINATIONS: DEFINITIONS is found on page 37-7283 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-203, 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.306 PLACEMENT DETERMINATIONS: REFERRAL PROCESS is found on page 37-7289 of the Administrative Rules of Montana.

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

IMP: 53-20-203, 53-20-209, MCA

37.34.307 PLACEMENT DETERMINATIONS: SCREENING PROCEDURES is found on page 37-7291 of the Administrative Rules of Montana.

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

IMP: 53-20-203, 53-20-209, MCA

37.34.308 PLACEMENT DETERMINATIONS: CRITERIA is found on page 37-7292 of the Administrative Rules of Montana.

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

IMP: 53-20-203, 53-20-209, MCA

37.34.309 PLACEMENT DETERMINATIONS: LOCAL SCREENING COMMITTEES is found on page 37-7293 of the Administrative Rules of Montana.

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

IMP: 53-20-203, 53-20-209, MCA

37.34.310 PLACEMENT DETERMINATIONS: CENTRAL SCREENING COMMITTEE is found on page 37-7294 of the Administrative Rules of Montana.

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

IMP: 53-20-203, 53-20-209, MCA

37.34.311 PLACEMENT DETERMINATIONS: CATEGORICAL EXCEPTIONS TO PLACEMENT RULES is found on page 37-7295 of the Administrative Rules of Montana.

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

IMP: 53-20-203, 53-20-209, MCA

37.34.318 PLACEMENT DETERMINATIONS: SUPPORTED LIVING SCREENING is found on page 37-7303 of the Administrative Rules of Montana.

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

IMP: 53-20-203, 53-20-209, MCA

37.34.319 PLACEMENT DETERMINATIONS: SUPPORTED EMPLOYMENT SCREENING is found on page 37-7303 of the Administrative Rules of Montana.

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

IMP: 53-20-203, 53-20-209, MCA

37.34.325 PLACEMENT DETERMINATIONS: SERVICE EXCHANGE is found on page 37-7307 of the Administrative Rules of Montana.

AUTH: 53-2-204, 53-20-203, 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.329 PLACEMENT DETERMINATIONS: TRIAL PLACEMENT is found on page 37-7311 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-203, 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.330 PLACEMENT DETERMINATIONS: TEMPORARY SERVICE AUTHORIZATION is found on page 37-7311 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-203, 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.335 PLACEMENT DETERMINATIONS: NOTICES AND APPEALS is found on page 37-7315 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-20-203, 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

4. STATEMENT OF REASONABLE NECESSITY

Effective July 1, 2013, the Department of Public Health and Human Services (department) implemented a new screening policy for acceptance of eligible persons into the Medicaid-funded home and community services program for persons with developmental disabilities administered by the Developmental Disabilities Services Program. This new screening policy was implemented at the direction of the federal Centers for Medicare and Medicaid (CMS) which is responsible for the federal administration and oversight of the Medicaid home and community waiver programs. The department is proposing to repeal the existing rule set at ARM Title 37, chapter 34, subchapter 3 in order to comply with the CMS directive and draft a new placement rule set for the program.

5. The department intends to apply these rules retroactively to July 1, 2013. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-

9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 3, 2013.

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

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

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

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

11. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Cary B. Lund
Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State August 26, 2013.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.34.201 and the repeal of) PROPOSED AMENDMENT AND
ARM 37.34.202, 37.34.207,) REPEAL
37.34.208, 37.34.211, 37.34.212,)
37.34.217, 37.34.222, 37.34.225, and)
37.34.226, pertaining to eligibility)

TO: All Concerned Persons

1. On September 25, 2013, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on September 18, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.34.201 ELIGIBILITY: GENERAL ELIGIBILITY REQUIREMENTS

(1) A person, in order to be considered for placement into a developmental disabilities services program funded through the Developmental Disabilities ~~p~~Program (DDP) of the department, must be determined by the department in accordance with the criteria ~~and procedures~~ of ~~these~~ this rules to be a person with a developmental disability ~~as defined at 53-20-202(3), MCA.~~

(2) ~~A child and the child's family, in order to be considered for placement into family education and support services funded through the Developmental Disabilities program of the department, must be determined by the department in accordance with the criteria and procedures of these rules to be a person with a developmental disability as defined at 53-20-202(2), MCA or a person with a developmental delay or potentially subject to developmental delay.~~ The Determining Eligibility for Services to Persons with Developmental Disabilities in Montana: A Staff Reference Manual, 5th Edition, 2011, sets forth the requirements for eligibility of the DDP's service programs.

~~(3) A determination of eligibility, except for federally funded Part H family education and support services, does not entitle a person to placement into any developmental disabilities service. Eligibility for the DDP service programs, with the exception of federally funded Part C services, must be determined in accordance with the requirements of the Determining Eligibility for Services to Persons with Developmental Disabilities in Montana: A Staff Reference Manual, 5th Edition, 2011. A copy of the manual may be obtained from the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604 or at <http://www.dphhs.mt.gov/dsd/ddp/ddeligmanual.pdf>.~~

~~(4) A person who is eligible to be considered for placement into developmental disabilities services may apply for services by following the placement determination procedures at ARM 37.34.301, et seq.~~

~~(5) Appropriate documentation of eligibility will be maintained by the department or a responsible contractor according to procedures established by the department.~~

~~(6) Application for determinations of eligibility and placement, except for family education and support services, are made through developmental disabilities case managers. Application for determinations of eligibility and placement for family education and support services are made through the family education and support services contractors.~~

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

IMP: 53-20-203, 53-20-209, 53-6-402, MCA

4. The department proposes to repeal the following rules:

37.34.202 ELIGIBILITY: EVALUATION is found on page 37-7248 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-203, 53-20-209, MCA

37.34.207 ELIGIBILITY: FEDERALLY FUNDED PART H FAMILY EDUCATION AND SUPPORT SERVICES is found on page 37-7254 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-203, 53-20-209, MCA

37.34.208 ELIGIBILITY: FEDERALLY FUNDED INTENSIVE FAMILY EDUCATION AND SUPPORT SERVICES is found on page 37-7255 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA

IMP: 53-20-203, 53-20-209, MCA

37.34.211 ELIGIBILITY: CHILDREN'S COMMUNITY HOME SERVICES is found on page 37-7259 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-209, MCA

37.34.212 ELIGIBILITY: CHILDREN'S SUMMER DAY SERVICES is found on page 37-7259 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.217 ELIGIBILITY: FEDERALLY FUNDED INTENSIVE ADULT SERVICES is found on page 37-7262 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.222 ELIGIBILITY: FEDERALLY FUNDED SENIOR SERVICES is found on page 37-7267 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

37.34.225 DEVELOPMENTAL DISABILITIES COMMUNITY SERVICES ELIGIBILITY: TERMINATION OF ELIGIBILITY FOR A PROGRAM is found on page 37-7270 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-205, 53-20-209, MCA

37.34.226 ELIGIBILITY: APPEAL PROCEDURES is found on page 37-7273 of the Administrative Rules of Montana.

AUTH: 53-20-204, MCA
IMP: 53-20-203, 53-20-209, MCA

5. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.201 and is proposing to repeal ARM 37.34.202, 37.34.207, 37.34.208, 37.34.211, 37.34.212, 37.34.217, 37.34.222, 37.34.225, and 37.34.226.

It is the department's intention that the information contained in the above-stated repealed rules will be updated and placed in program-specific rules. This provides for the placement of each program's specific eligibility requirements, along with the program's other regulations.

ARM 37.34.201

The department is proposing to amend this rule in order to remove outdated and program-specific information.

The department is also proposing to adopt and incorporate the Determining Eligibility for Services to Persons with Developmental Disabilities in Montana: A Staff Reference Manual, 5th Edition, 2011 (manual). The manual is authored by William Cook, Ph.D., who is a clinical psychologist in the state of Montana and an affiliate in the Psychology Department at the University of Montana. Dr. Cook has been licensed to practice psychology for over 30 years, and provides therapy, evaluations, and agency consultations, including staff training and program evaluation. The intent of this manual is to provide a training and reference guide which presents a clinical decision-making process for determining eligibility. The department has been applying the principles and requirements in this manual since 1997 to determine developmental disability eligibility.

The department is proposing to repeal the following rules as part of a rule update and reorganization project:

ARM 37.34.202, 37.34.208, 37.34.211, 37.34.212, 37.34.217, and 37.34.222

These rules no longer reflect current practice and therefore will be removed.

ARM 37.34.207

Eligibility for "Federally Funded Part H Family Education and Support Services" will be renamed "Eligibility for Federally Funded Part C Services" to reflect the conversion from Part H to Part C and relocated into a separate subchapter.

ARM 37.34.225

This rule will be moved from the eligibility subchapter into specific program rules. The department believes this will assist to clarify terminology used within the Developmental Disabilities Program's community by differentiating the terminology "eligible for," which means found to be developmentally disabled, and "placement into," which means a person who is eligible for services has been selected for placement into services.

ARM 37.34.226

The appeal procedures will remain in ARM Title 37, chapter 5 and a person in services will maintain their right for an appeal; however, in order to consolidate appeals-related provisions, this reference to ARM Title 37, chapter 5 will be removed.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 3, 2013.

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

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

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

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

11. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Cary B. Lund
Cary B. Lund
Rule Reviewer

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

Certified to the Secretary of State August 26, 2013.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.85.105 and 37.86.1105) PROPOSED AMENDMENT
pertaining to Medicaid pharmacy unit)
dose prescription fee)

TO: All Concerned Persons

1. On September 25, 2013, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on September 18, 2013, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY
ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID
PROVIDER FEE SCHEDULES (1) and (2) remain the same.

(3) The department adopts and incorporates by reference, the fee schedule for the following programs within the Health Resources Division, on the date stated.

(a) The ~~inpatient~~ hospital services fee schedule and inpatient hospital base fee schedule rates includeing:

(i) remains the same.

(ii) the Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), outlier thresholds, and APR grouper version 29 ~~are~~ contained in the APR-DRG Table of Weights and Thresholds effective July 1, 2013. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds effective July 1, 2013.

(b) The ~~Outpatient~~ hospital services fee schedules includeing:

(i) the Outpatient Prospective Payment System (OPPS) fee schedule as published by the Centers for Medicare and Medicaid Services (CMS) in 71 Federal Register 226, effective January 1, 2007, and reviewed annually by CMS as required in 42 CFR 419.5 ~~and~~ as updated ~~quarterly~~ by the department;

(ii) through (c) remain the same.

(d) ~~The Relative Values for Dentists, as provided in ARM 37.86.1004, reference published in 2013 resulting in a dental conversion factor of \$31.89 and fee schedule is effective July 1, 2013. The dental services covered procedures, the Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective July 1, 2013.~~

(e) The dental services covered procedures, the Dental and Denturist Program Provider Manual, as provided in ARM 37.86.1006, is effective July 1, 2013.

(e) remains the same but is renumbered (f).

(i) remains the same.

(ii) a minimum of \$2.00 and a maximum of \$6.52 for preferred brand-name and generic drugs and generic drugs not identified on the preferred list;_

~~(iii) (g) The outpatient drugs reimbursement, compound drug dispensing fee range as provided in ARM 37.86.1105(4), the dispensing fee for each compounded drug will be \$12.50, \$17.50, or \$22.50 based on the level of effort required by the pharmacist, is effective July 1, 2013;_~~

~~(iv) (h) The outpatient drugs reimbursement, vaccine administration fee as provided in ARM 37.86.1105(5), the vaccine administration fee will be \$21.32 for the first vaccine and \$13.38 for each additional administered vaccine, effective July 1, 2013; and.~~

~~(v) (i) The out-of-state providers will be assigned a \$3.50 dispensing fee.~~

(i) The outpatient drugs reimbursement, unit dose prescriptions fee as provided in ARM 37.86.1105(9), will be \$0.75 per pharmacy-packaged unit dose medication, effective November 1, 2013.

(f) through (k) remain the same but are renumbered (k) through (p).

(4) through (6) remain the same.

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

IMP: 53-2-201, 53-6-101, 53-6-402, MCA

37.86.1105 OUTPATIENT DRUGS, REIMBURSEMENT (1) through (8) remain the same.

(9) The department will reimburse pharmacies a unit dose prescription fee as provided in ARM 37.85.105(3). The unit dose prescription fee will offset the additional cost of packaging supplies and materials which are directly related to filling unit dose prescriptions by the individual pharmacy. This fee is in addition to the regular dispensing fee allowed. The unit dose prescription fee will not be paid for a unit dose prescription packaged by drug manufacturers. Unit dose prescriptions may not exceed the 34-day supply limit. Only one unit dose prescription fee is allowed each month for each prescribed medication.

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

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) proposes to amend ARM 37.85.105 and 37.86.1105.

These rule changes are necessary to update the rules to accurately reflect how pharmacy benefits are administered. The unit dose prescription fee has been in place for several years and was inadvertently removed from the rules and needs to be added back for consistency. In 2007, the department was poised to modify ARM 37.86.1102, in regards to outpatient drug reimbursement to comply with provisions of the Deficit Reduction Act of 2005 (DRA). One component of the DRA required the department to remove the enhanced payment for unit dose prescriptions. During the rule amendment process the National Association of Chain Drug Stores (NACDS) and the National Community Pharmacists Association (NCPA) filed suit in federal court against CMS and won an injunction in December 2007, staying certain parts of the regulation relating to pharmacy reimbursement. The department pulled the proposed rule changes and inadvertently did not reinstate the unit dose dispensing fee at that time. As of today, CMS has not changed the dispensing fee rules; therefore, it is essential that the unit dose dispensing fee be returned to the administrative rules since the department has continued to pay them in accordance with the Medicaid State Plan.

ARM 37.85.105

The department is proposing to amend this rule by adding the fee associated with pharmacy-packaged unit dose prescriptions. The formatting of this rule is being amended to align the numbering and text with the other text in this rule.

ARM 37.86.1105

The department is proposing to amend this rule by adding back into the rule the description and limitations for unit dose prescriptions. This language was mistakenly removed in 2007 and is now being corrected.

Fiscal Impact

No fiscal impact is anticipated by the proposed rule amendments. These changes are expected to be budget neutral.

5. The department intends to adopt these rule amendments effective November 1, 2013.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., October 3, 2013.

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

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

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

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

11. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ John C. Koch
John C. Koch
Rule Reviewer

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

Certified to the Secretary of State August 26, 2013.

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

In the matter of the adoption of New) NOTICE OF PUBLIC HEARING ON
Rules I through VII pertaining to) PROPOSED ADOPTION
simplified regulatory options for small)
water and sewer utilities)

TO: All Concerned Persons

1. On October 1, 2013, at 1:30 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 adoption of the above-stated rules.

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 September 24, 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, 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 rules as proposed to be adopted provide as follows:

NEW RULE I DEFINITIONS (1) "Contribution in aid of construction" means any money, services, or property received by a water or sewer utility to fund capital investments at no cost to the company with no obligation to repay.

(2) "Operating ratio" means the ratio of a utility's operating expenses to operating revenues. For purposes of [New Rule IV], a small water or sewer utility's operating ratio will be determined based on the expense and revenue information required to be submitted by the utility on the department's operating ratio methodology form referred to in [New Rule IV(2)].

(3) "Small water or sewer utility" means a water or sewer utility subject to the commission's jurisdiction that serves fewer than 500 customers.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA
IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: The department proposes these definitions to clearly explain certain terms used in these rules.

NEW RULE II SIMPLIFIED REGULATORY TREATMENT OPTIONS

(1) Two simplified regulatory treatment options are available to a small water or sewer utility that allow it to establish or change its rates by a method other than

filing a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq. The options are:

(a) adoption of the commission-approved standard rate tariff to establish initial rates as described in [New Rule III]; or

(b) filing a rate application in accordance with the operating ratio methodology as described in [New Rule IV].

(2) A small water or sewer utility is not required to establish or change its rates using the simplified regulatory treatment options. It may elect to file a rate application in accordance with ARM 38.5.101, et seq.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: The department proposes to simplify regulatory requirements for small water and sewer utilities because it is in the public interest to have a regulatory system that works efficiently to establish reasonable rates. All water and sewer utilities that are subject to department jurisdiction are currently required to submit comprehensive information required by the department's minimum rate case filing requirements if they want to establish initial rates or change existing rates. An attorney must be hired to represent the utility in the rate case and usually the services of an accounting professional are engaged as well. Small water and sewer utilities, with their limited financial and staff resources, typically struggle to meet the department's requirements for and expectations of an applicant in a rate case. These rules create two simplified regulatory treatment alternatives for water and sewer utilities with 500 or fewer customers that choose to avail themselves of one of the proposed alternatives rather than file conventional rate cases. The proposed rules will allow them to choose to set or revise rates using methods that still provide reasonable rates but are less burdensome and expensive for the utilities, ratepayers, and the department.

NEW RULE III STANDARD RATE TARIFF (1) A small water or sewer utility may establish its initial rates by adopting the commission's standard rates for small water or sewer utilities or by adopting its own rates if they are lower than the applicable standard rates. The standard rate tariff forms to be submitted for commission approval by the utility are available from the commission upon request or by obtaining them from the commission's web site at www.psc.mt.gov.

(2) The standard rates for small water and sewer utilities that choose to establish rates using this simplified regulatory option are:

(a) a flat charge of \$50 per connection per month for a water utility that provides water to its customers on an unmetered basis;

(b) a monthly service charge of \$40 per connection, plus a usage rate of \$2.00 per 1,000 gallons for customer usage in excess of 10,000 gallons, for a small water utility that provides water to its customers on a metered basis;

(c) a flat charge of \$30 per connection per month for a small sewer utility.

(3) Other terms and conditions of service are those provided in the commission's standard rate tariff forms and in ARM 38.5.2501, et seq.

(4) A person who seeks to challenge (2)(a), (b), or (c) may submit a complaint pursuant to ARM 38.2.2101, et seq.

(5) A small water or sewer utility that intends to adopt the standard rates must notify the commission and every customer in writing of its intention at least 30 days in advance of the proposed effective date of the standard rate tariff adoption.

(6) The customer notification must be mailed to each customer's billing address. The notification must inform customers of the standard rates, provide information that shows the typical bill impact of the application of the standard rates to the utility's average level of customer usage, and provide contact information for the utility, the Montana Consumer Counsel, and the commission.

(7) The commission notification must include the standard rates in tariff form, a copy of the notification provided to customers, and verification that all customers were mailed a notice of the proposed rate change. A small water or sewer utility must, if applicable, include in its commission notification a complete copy of the information regarding the utility's financial capacity that the utility provided to the Montana Department of Environmental Quality as part of that agency's public water system review process.

(8) The commission will act on the request to adopt the standard rate tariff no later than 45 days after it is received by the commission.

(9) The standard rate tariff adopted by a small water or sewer utility expires three years after its effective date, unless the commission approves an extension. At least three months prior to the expiration of the standard rate tariff, the utility must notify the commission whether it will file a rate application in accordance with the minimum rate case filing standards of ARM 38.5.101, et seq., or in accordance with the operating ratio methodology pursuant to [New Rule IV].

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: New Rule III establishes the standard rates that a small water or sewer utility may adopt as its initial rates for a limited three-year period if the utility chooses this simplified regulatory treatment option. This option is simple for a utility to implement and for the department to administer. The standard rates specified in the rule are set at levels that are similar to existing tariffed rates the department has approved for regulated small water and sewer utilities. This option will be especially helpful when a small water or sewer utility must establish initial rates because it is often the case that a small water or sewer utility that is new to regulation does not have the documentation and historical financial information that the department requires in order to determine the utility's rate base. When the standard rate tariff expires for a utility after three years of operation, the utility will have the operational experience and financial information required to establish rates according to either the operating ratio methodology or the department's minimum rate case filing requirements.

NEW RULE IV OPERATING RATIO METHODOLOGY (1) This option is available only to a small water or sewer utility that has been operating under commission-approved tariffed rates for at least three years. A small water or sewer

utility electing this simplified option must file a rate application with the commission using the operating ratio methodology to determine the appropriate rates to be charged by the utility.

(2) The commission will make available the forms and schedules to calculate the operating ratio which must be completed and included by the utility in the rate application. The forms are available upon request from the commission or by obtaining them from the commission's web site at www.psc.mt.gov.

(3) The commission will determine whether an increase or decrease in operating revenues is justified by dividing the utility's reasonable and legitimate operating expenses by the target operating ratio of 80 percent, and subtracting that amount from the operating revenues. A positive difference will result in a rate decrease; a negative difference will result in a rate increase.

(4) No later than ten days after filing the application, the utility must notify its customers in writing of the application and the proposed rate changes. The notice shall provide, at a minimum:

(a) the filing date of the rate application;

(b) a statement that the utility filed its application without the necessary costs of preparing for a hearing; however, a formal public hearing will be held if at least 20 percent of the utility's customers or the Montana Consumer Counsel submits a written request for hearing;

(c) the current rate, the proposed rate, and the percentage of the difference between the two;

(d) a statement that customers may contact the utility, the Montana Consumer Counsel, or the commission regarding the application and contact information for the utility, the Montana Consumer Counsel, and the commission.

(5) A copy of the notice and the mailing list of customers to whom the notice was, or will be mailed, must be submitted to the commission with the rate application.

(6) There will be no hearing on the application unless 20 percent or more of the utility's customers or the Montana Consumer Counsel request it, or the commission schedules a hearing on its own motion. Upon request for hearing, the commission will use a contested case procedure to conduct its review of the application. In any event, an individual commissioner may schedule a hearing to obtain public comment on the application.

(7) In the event a hearing is held, the utility may elect to designate its application to serve as its prefiled evidence; however, the utility is not precluded from filing additional evidence.

(8) Rates approved pursuant to the operating ratio methodology are subject to periodic review to ensure their continued justness and reasonableness.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: New Rule IV explains the operation of the operating ratio methodology, which is one of the simplified regulatory treatment options a small water or sewer utility may choose instead of the conventional ratemaking process. Like the standard rate tariff option in New Rule III, this option is simpler and less expensive

for a utility to implement than traditional ratemaking and for the department to administer.

NEW RULE V PURCHASED WATER COST PASS-THROUGH OPTION

(1) A small water or sewer utility may file an application for authorization to pass through price changes (increases and decreases) relating to the cost of purchased water obtained from a local municipality or from other entities which are not affiliated interests.

(2) Following commission approval of the establishment of a purchased water cost pass-through mechanism, the utility shall timely revise and refile its pass-through rate tariff as its costs of purchased water change.

(3) A purchased water cost pass-through tariff shall be revised and refiled within 60 days of a decrease in purchased water costs, and shall be designed to pass through to customers the entire reduction in purchased water costs from the date the reduction becomes effective. A purchased water cost pass-through tariff may be revised and refiled at any time after an increase in purchased water costs, and shall be designed to recover cost increases prospectively from the date of filing only.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA
IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: New Rule V will allow a small water or sewer utility that purchases water for use by its customers or for the operation of its utility to quickly reflect in rates any commodity price changes.

NEW RULE VI RESERVE ACCOUNT (1) The commission may authorize a small water or sewer utility to establish a reserve account. A reserve account is funded by customer contributions collected through rates for the purpose of making capital improvements to a utility plant pursuant to a long-range plan approved by the commission, or as required to assure compliance with state or federal safe drinking water statutes or regulations. The burden of demonstrating that actual or proposed expenditures are reasonable and in the public interest shall be borne by the utility.

(2) The amounts to be allocated to the reserve account will be determined by the commission after review of the utility's proposed capital budget and the justification for that budget.

(3) Funds in the reserve account shall be kept in a separate interest-bearing cash account. Interest accrued shall be credited to the reserve account and shall become part of the corpus of the reserve account.

(4) The utility must deposit all funds collected from customers for the reserve account at the close of each customer billing period and, in any event, no less frequently than quarterly.

(5) Funds from the account shall not be employed for a purpose other than those permitted under this section. Disbursements from the fund shall not be made without written authorization by the commission upon petition, shall be restricted to the uses in (1), and shall be made in accordance with a capital budget submitted with the initial rate filing or as modified with the consent of the commission.

(6) The utility shall report all disbursements from the reserve account by written notice to the commission and to other persons as the commission may direct within ten days of disbursement. In addition, the utility must provide by March 1 of each year a verified statement from the financial institution that houses the reserve account that shows all account transactions for the preceding calendar year. Disbursements from the reserve account which are found by the commission to have been made improperly, or in violation of any statute, regulation, or order of the commission shall be returned to the account or be refunded to ratepayers as the commission may direct. A person who makes, authorizes, or directs an improper or illegal disbursement of reserve funds shall be subject to the provisions of 69-3-209, MCA.

(7) Plant capitalized by means of the reserve account shall be accounted for as a contribution in aid of construction.

(8) In the event of a change of ownership of the small water or sewer utility, all funds in the reserve account must remain the property of the utility to be used for commission-approved purposes.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: The department is statutorily responsible for ensuring that regulated utilities provide adequate service. A small water or sewer utility will not provide adequate service to customers if it does not plan for and make necessary infrastructure improvements. The purpose of New Rule VI is to provide a funding source for a small water or sewer utility to undertake necessary system infrastructure improvements, subject to planning requirements, and strict safeguards to prevent improper use of the funds.

NEW RULE VII RATEBASE TREATMENT OF SUBDIVISION-RELATED WATER OR SEWER UTILITY ASSETS – PRESUMPTION OF RECOVERY

(1) When a small water or sewer utility that has been built in connection with a subdivision elects to file a rate application pursuant to the commission's minimum rate case filing standards, ARM 38.5.101, et seq., or pursuant to one of the simplified regulatory treatment options, there is a rebuttable presumption that the value of original utility plant and assets has been recovered in the sale of lots in a development to be served by the small water or sewer utility.

AUTH: 69-2-101, 69-3-103, 69-3-301, MCA

IMP: 69-2-101, 69-3-103, 69-3-301, MCA

REASON: When a small water or sewer utility files a traditional rate case, the department is often in the position of trying to determine the rate base for a utility that has been built and operated by the developer of the subdivision whose residents are being served by the utility. Often, the utility owner becomes aware of the fact that he or she is operating a regulated utility subject to department jurisdiction several years after the utility started providing service to customers. In proceedings to establish initial rates for these utilities, it is difficult to determine how

much of the cost of the utility system, if any, was included in the price of the lots purchased by homeowners and, therefore, should not be included in rate base. New Rule VII provides a clear statement of how the department will treat developer-owned utility assets for ratemaking purposes.

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, 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., October 4, 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.

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption of the above-referenced rules will significantly and directly impact small businesses. The small businesses that will be affected significantly and directly are the small water and sewer utilities that are subject to department jurisdiction. These small utility businesses will benefit from adoption of the proposed rules because the new rules provide simplified regulatory options that will reduce the burden and cost of the ratemaking process when compared to filing rate cases under existing department rules. Recent rate cases before the department involving small water and sewer utilities have resulted in rate case expenses for the utilities (that were passed through to ratepayers) of more than

\$30,000. The majority of the rate case expense in those cases was the cost of hiring legal and financial professionals in order for the utilities to present their cases. If the proposed rules are adopted and if a small water or sewer utility takes advantage of the new regulatory options and its election of one of the simplified methods is not challenged, it will not be necessary for the utility to engage professional services to support the ratemaking process. The department is unaware of any significant and direct adverse impacts that adoption of the proposed rules will have on other small businesses.

/s/ JUSTIN KRASKE
Justin Kraske
Rule Reviewer

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

Certified to the Secretary of State August 26, 2013.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 42.21.116, 42.21.158, and) PROPOSED AMENDMENT
42.21.162 relating to personal property)
valuation)

TO: All Concerned Persons

1. On September 26, 2013, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation that you need, no later than 5 p.m. on September 16, 2013. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov.

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

42.21.116 EXEMPT INTANGIBLE PERSONAL PROPERTY DEDUCTION FOR COMMERCIAL AND INDUSTRIAL PROPERTY (1) remains the same.

AUTH: 15-1-201, MCA
IMP: 15-6-138, 15-6-218, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.21.116, as a matter of housekeeping, to include a missing implementing citation.

42.21.158 PERSONAL PROPERTY REPORTING REQUIREMENTS (1) remains the same.

~~(2) As determined by the department, if the aggregate market value of an individual's or business entity's class eight property is \$20,000 or less, the individual's or business entity's class eight property is exempt from taxation. If the aggregate market value of an individual's or business entity's class eight property is greater than \$20,000, the individual's or business entity's class eight property is subject to taxation. To ensure fair and accurate reporting of all taxable class eight property, the department may require all individuals or business entities to report all of their class eight property periodically, including exempt property. Beginning in tax~~

year 2011, the department requires biennial reporting of all exempt class eight property.

(a) Starting in tax year 2012, the aggregate market value of class eight property owned by an individual or business entity will be taxed as follows:

(i) the first \$2 million of taxable market value will be taxed at the rate of 2 percent; and,

(ii) all taxable market value in excess of \$2 million will be taxed at the rate of 3 percent.

(b) If the conditions provided in 15-6-138, MCA, are met, the aggregate market value of class eight property owned by an individual or business entity, as provided in (2), will be taxed as follows:

(i) the first \$3 million of taxable market value will be taxed at the rate of 1.5 percent; and,

(ii) all taxable market value in excess of \$3 million will be taxed at the rate of 3 percent.

(c) The department will apply the operative tax rates identified in (a) or (b) to an individual's or business entity's class eight property by:

(i) determining the fraction obtained by dividing the appropriate threshold level, \$2 million or \$3 million, respectively, as identified in (a)(i) or (b)(i), by the individual's or business entity's total aggregated class eight taxable market value;

(ii) determining the portion of class eight property in each location that will receive the reduced tax rate, as identified in (a) or (b), by multiplying the fraction obtained in (c)(i), by the taxable market value of class eight property in each location owned by an individual or business entity;

(iii) multiplying the appropriate tax rate, identified in (a)(i) or (b)(i), by the fractional portion of the individual's or business entity's class eight property; and

(iv) applying the 3 percent rate, identified in (a)(ii) and (b)(ii), to the remaining fractional portion of the individual's or business entity's class eight property identified in (c)(ii).

(d) The following are examples of how the provisions of (2)(a), (b), and (c) apply:

(i) Example 1. On January 1, 2012, Taxpayer X owns class eight property with a total taxable market value of \$5 million in four different locations throughout the state. The 2 percent rate for the first \$2 million of aggregate taxable market value is applied to the property in each location as follows:

Location	Taxable market value	2% rate allocation	3% rate allocation
1	\$ 500,000	$2/5 \times \$500,000 = \$200,000$	$3/5 \times \$500,000 = \$300,000$
2	\$1,000,000	$2/5 \times \$1,000,000 = \$400,000$	$3/5 \times \$1,000,000 = \$600,000$
3	\$1,500,000	$2/5 \times \$1,500,000 = \$600,000$	$3/5 \times \$1,500,000 = \$900,000$
4	\$2,000,000	$2/5 \times \$2,000,000 = \$800,000$	$3/5 \times \$2,000,000 = \$1,200,000$
	\$5,000,000		

After adjustment for the tax rate difference, the taxable value at each location is determined by multiplying the amounts allocated to each location by the applicable tax rates and adding the results.

Location	2% taxable value	3% taxable value	Total taxable value
1	$\$200,000 \times .02 = \$4,000$	$\$300,000 \times .03 = \$9,000$	\$13,000
2	$\$400,000 \times .02 = \$8,000$	$\$600,000 \times .03 = \$18,000$	\$26,000
3	$\$600,000 \times .02 = \$12,000$	$\$900,000 \times .03 = \$27,000$	\$39,000
4	$\$800,000 \times .02 = \$16,000$	$\$1,200,000 \times .03 = \$36,000$	\$52,000

The mills for the levy district within which each property is located are applied to this total taxable value. Various government subdivisions have the authority to impose mills to raise taxes. They are sometimes collectively referred to as "taxing jurisdictions." The department creates a levy district for each distinct geographic area in the state where the same mills apply to all of the properties. For example, location 1 could be in a levy district that has mills imposed by the state, county, a high school district, and a mosquito district; location 2 could be in a levy district that has mills imposed by the state and county; location 3 could be in a levy district that has mills imposed by the state, county, a high school district, a grade school district, and a rural fire district; and location 4 could be in a levy district that has mills imposed by the state, county, city, and an urban transportation district.

(ii) Example 2. On January 1, 2012, Taxpayer Y owns class eight property with a total taxable market value of \$2 million in four different locations throughout the state. No allocation of Taxpayer Y's property between the 2 percent and 3 percent tax rates is required. The property at each location is taxed at the 2 percent rate.

Location	Taxable market value	Total taxable value
1	\$ 500,000	$\$ 500,000 \times .02 = \$10,000$
2	\$ 250,000	$\$ 250,000 \times .02 = \$ 5,000$
3	\$ 250,000	$\$ 250,000 \times .02 = \$ 5,000$
4	\$1,000,000	$\$1,000,000 \times .02 = \$20,000$
	\$2,000,000	

The mills for the levy district within which each property is located are applied to this total taxable value.

(iii) Example 3. On January 1, 2012, Taxpayer Z owns class eight property with a total taxable market value of \$19,000 in four different locations throughout the state. Because the class eight property of an individual or business entity that owns an aggregate of \$20,000 or less in market value of class eight property is exempt from taxation, (2)(a), (b), and (c) do not apply to Taxpayer Z.

(iv) Example 4. Assume the same facts as in (i) Example 1, but with the added fact that one of the locations is within a tax increment financing district (TIFD). The calculations and results of Example 1 do not change: the total taxable value is determined the same way and the mills for the levy districts are applied the same

~~way. The fact that there is a TIFD changes only how the taxes that are levied are distributed. For the purposes of this rule, the statewide aggregate taxable market value of a taxpayer's class eight property includes all property owned, claimed, possessed, controlled, or managed by an individual or business entity, either directly or indirectly through an affiliated entity or family member, unless that property is specifically exempted in Title 15, chapter 6, part 2, of MCA.~~

~~(3) The department will provide educational information on the class eight personal property exemption to all individual taxpayers or business entities the department is aware of that currently have class eight business personal property. As used in this rule, "affiliated entity" means:~~

~~(a) a member of a combined group of unitary corporations filing a Montana corporation license tax return;~~

~~(b) a member of an affiliated group of corporations filing a U.S. Consolidated Income Tax Return;~~

~~(c) any corporation if the individual or business entity directly or indirectly owns more than 50 percent of the stock value or voting power;~~

~~(d) any partnership if the individual or business entity directly or indirectly owns more than 50 percent of the capital interest in, or the profits of, the partnership;~~

~~(e) a corporation and a partnership if the same persons own:~~

~~(i) more than 50 percent in value of the corporation's stock; and~~

~~(ii) more than 50 percent of the capital interest in, or the profits of, the partnership;~~

~~(f) an S corporation and another S corporation, if the same individuals own more than 50 percent in value of the outstanding stock of each corporation;~~

~~(g) an S corporation and a C corporation, if:~~

~~(i) the same individuals own more than 50 percent in value of the outstanding stock of each corporation; and~~

~~(ii) any trust, if the individual or business entity is the grantor or a beneficiary.~~

~~(4) The taxpayer's completed personal property statement as provided for in 15-8-301, MCA, must be returned to the department postmarked no later than February 15. If a taxpayer fails to return a completed personal property statement by February 15, the department will provide a written notice to the taxpayer advising the taxpayer of their obligation to return a completed personal property statement. The notice shall also advise the taxpayer that they are subject to penalty for refusing or neglecting to respond to the department's request for information under the provisions of 15-1-303 and 15-8-309, MCA, or any other applicable statute. For purposes of applying (2) and (3):~~

~~(a) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and~~

~~(b) an individual is considered as owning the stock, directly or indirectly, by the individual's spouse or minor child.~~

~~(5) Statements postmarked after March 15 will be assessed the penalty provided in (4) unless:~~

~~(a) the taxpayer provides evidence of their inability to comply with the timeframes set forth in (4) due to hospitalization, physical illness, infirmity, or mental illness; and~~

~~(b) evidence that this/these condition(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March 15 to prevent timely filing of the reporting form. As determined by the department, if the statewide aggregate market value of an individual's or business entity's class eight property is \$100,000 or less, the individual's or business entity's class eight property is exempt from taxation. If the aggregate market value of an individual's or business entity's class eight property is greater than \$100,000 the market value of an individual's or business entity's class eight property that is greater than \$100,000 is subject to taxation.~~

~~(6) Industrial and commercial property taxpayers shall provide documentation of the installed costs of intangible personal property included on the taxpayer's accounting records. Starting in tax year 2014, the department will apply the exemption and the applicable tax rates identified in (a) through (d) to an individual's or business entity's class eight property by adding together the statewide market value of class eight property owned by the individual or business entity to determine the aggregate market value. If the aggregate market value of class eight property is:~~

~~(a) \$100,000 or less, the taxable market value of the property is zero;~~

~~(b) greater than \$100,000 the department will apply the \$100,000 exemption proportionally between each property owned;~~

~~(c) \$6,100,000 or less, the department will apply the \$100,000 exemption proportionally between each property owned and apply the 1.5 percent taxable rate to the remaining taxable market value; or~~

~~(d) greater than \$6,100,000 the department will apply the \$100,000 exemption proportionally between each property owned, apply the 1.5 percent taxable rate proportionally to the next \$6,000,000 of taxable market value, and apply the 3 percent taxable rate to the remaining taxable market value.~~

~~(7) For purposes of determining the statewide aggregate taxable market value of class eight property of an individual or business entity, the class eight property of an individual or business entity includes all property the individual or business entity owns, claims, possesses, controls, or manages by himself, herself, or itself directly or indirectly through an affiliated entity or family member. As used in this rule, "affiliated entity" means:~~

~~(a) a member of a combined group of unitary corporations filing a Montana corporation license tax return;~~

~~(b) a member of an affiliated group of corporations filing a U.S. Consolidated Income Tax Return;~~

~~(c) any corporation if the individual or business entity directly or indirectly owns more than 50 percent of the stock value or voting power;~~

~~(d) any partnership if the individual or business entity directly or indirectly owns more than 50 percent of capital interests or profits interests in the partnership;~~

~~(e) a corporation and a partnership if the same persons own:~~

~~(i) more than 50 percent in value of the corporation's stock; and~~

~~(ii) more than 50 percent of the capital interest or the profits interest in the partnership;~~

~~(f) an S corporation and another S corporation, if the same persons own more than 50 percent in value of the outstanding stock of each corporation;~~

~~(g) an S corporation and a C corporation, if the same individuals own more than 50 percent in value of the outstanding stock of each corporation; and~~
~~(h) any trust, if the individual or business entity is the grantor or a beneficiary. When the department requires a personal property statement/reporting form as provided in 15-8-301, MCA, the statement/reporting form shall advise the taxpayer that they are subject to penalty under the provisions of 15-1-303 and 15-8-309, MCA, or any other applicable statute, for refusing or neglecting to respond to the department's request for information. The taxpayer's completed personal property statement/reporting form must be returned to the department postmarked no later than March 1.~~

~~(8) For purposes of applying (7):~~

~~(a) stock owned, directly or indirectly, by or for a corporation, partnership, estate, or trust is considered as being owned proportionately by or for its shareholders, partners, or beneficiaries; and~~

~~(b) an individual is considered as owning the stock owned, directly or indirectly, by the individual's spouse or minor child. A taxpayer's completed statement/reporting form postmarked after March 1 will be subject to the penalties referenced in (7) unless the taxpayer provides:~~

~~(a) evidence of their inability to comply with the timeframes due to hospitalization, physical illness, infirmity, or mental illness; and~~

~~(b) evidence that this/these condition(s), while not necessarily continuous, existed at sufficient levels in the period of January 1 to March 1 to prevent timely filing of the reporting form.~~

~~(9) The department may assess at the 3 percent rate all of the class eight property of any individual or business entity that does not either:~~

~~(a) affirm on their personal property and business equipment reporting form that they have no affiliated entities; or~~

~~(b) identify their affiliated entities on their personal property and business equipment reporting form. Beginning in Tax Year 2014, personal property owners whose aggregate class eight market value is \$100,000 or less, as defined in (2), will have no further reporting obligation, except:~~

~~(a) if the property owner acquires new personal property, the value of which brings the aggregate market value of the personal property above the \$100,000 exemption, the taxpayer must notify the department and complete a personal property statement/reporting form for the applicable tax year; or~~

~~(b) if the department requests the property owner to complete a personal property statement/reporting form as required by 15-8-301, MCA, or as a result of an audit and review of taxable value authorized by 15-8-104, MCA, and ARM 42.21.159.~~

~~(10) For any tax year after 2012, the exemption from tax provided in (2) may be denied for the property of any person that does not either:~~

~~(a) affirm on their personal property and business equipment reporting form that they have no affiliated entities; or~~

~~(b) identify their affiliated entities on their personal property and business equipment reporting form as provided in (9). New businesses that start up in tax year 2014, and after, are not required to submit a personal property statement/reporting form if the entity's business equipment is valued at \$100,000 or less,~~

unless requested by the department in accordance with (9).

(11) Industrial and commercial property taxpayers shall provide documentation of the installed costs of intangible personal property included on the taxpayer's accounting records.

(12) The department will provide educational information on the class eight personal property exemption to all individual taxpayers or business entities the department is aware of that currently have class eight business personal property.

AUTH: 15-1-201, 15-9-101, MCA

IMP: 15-1-121, 15-1-303, 15-6-138, Title 15, chapter 6, part 2, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-9-101, 15-24-902, 15-24-903, 15-24-904, 15-24-905, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.21.158, to properly implement Senate Bill 96, L. 2013, which changes the business personal property exemption from a \$20,000 threshold to a \$100,000 exemption. The proposed amendments also reorganize existing sections of the rule to provide a definition of the applicable entities first, and then explain the exemption and applicable percentages based upon the amount of personal property owned by an individual or business entity. The proposed amendments redefine the personal property reporting requirements and provide additional clarity. The proposed title amendment adds in the word "personal" to more fully capture the rule content.

The examples the department is proposing to strike from (2) were originally included as part of the rule based upon Senate Bill 372, L. 2011, which no longer applies. The department extended the application deadline from February 15 to March 1. This allows the property taxpayer more time to submit their statement/reporting form. The penalty will be imposed after March 1. Further proposed amendments in (2) define the statewide aggregate taxable market value of class eight properties.

The department also proposes to strike the language in (4) that references a written notice provided to the taxpayer reminding them of their obligation to return a completed personal property statement. A reminder notice is not a statutory requirement but was implemented by the department as a courtesy to the taxpayer. Removing the language will create administrative efficiencies and result in less paperwork for the taxpayer. Amendments in (5) and (6) will change the exemption from a \$20,000 threshold to a \$100,000 exemption, explain how the property will be taxed, and increase the dollar thresholds for the 1.5 percent and 3 percent tax rates.

Section (9), as amended, will explain that businesses with \$100,000 or less in tangible market value will no longer be required to report to the department unless they have acquired personal property that increases their aggregate taxable market value above \$100,000 or if the department requires the property taxpayer to submit a statement/reporting form. New businesses owning business equipment valued at \$100,000 or less are not required to submit a property reporting form unless requested by the department. These amendments change the department's existing processes from focusing upon self-reporting and less on auditing to focusing on auditing and less on self-reporting. The change in processes lessens the reporting requirements by businesses across the state.

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) remains the same.

(2) In order to obtain an exemption for personal property, other than class eight property that is ~~exempt under 15-6-138(4), MCA, freeport merchandise or business inventories that are exempt under 15-6-202, MCA, or intangible personal property that is exempt under 15-6-218, MCA,~~ automatically exempt under Title 15, chapter 6, part 2, MCA, an application for exemption must be filed before March 1 of the year for which the exemption is sought. If the applicant acquires the personal property after January 1, they must submit an application for exemption:

- (a) by March 1; or
 - (b) within 30 days of acquisition of a motor vehicle ~~the property;~~ or
 - (c) ~~within 30 days of receipt of an assessment notice, whichever is later.~~
- (3) through (7) remain the same.

AUTH: 15-1-201, MCA

IMP: Title 15, chapter 6, part 2, 15-8-201, 15-16-613, 15-24-301, 15-24-303,
MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.21.162 in conjunction with amendments being made to a rule in another chapter, ARM 42.20.102, relative to the proration of taxes for personal property. The amendments to ARM 42.20.102 correct a potential inequity among taxpayers caused by the existing wording of that rule. Similarly, the proposed amendments to ARM 42.21.162 will correctly allow the proration to apply only to motor vehicles based on the date of acquisition.

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: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.4375; or e-mail lalogan@mt.gov and must be received no later than October 3, 2013.

5. Laurie Logan, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at www.revenue.mt.gov. It can be found by selecting the "Administrative Rules" link in the left hand column of the homepage under the "Public Meetings" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 4, above, faxed to the office at 406.444.4375, or made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 96, L. 2013, Senator Bruce Tutvedt, was notified by regular mail on June 21, 2013, and subsequently notified on August 9, 2013.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses. By applying the standard of a small business impact analysis set out in the statute, the department has determined the law change in Senate Bill 96, L. 2013, and not the modification of the rules, causes the impact to small business.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State August 26, 2013

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a)
temporary emergency rule closing the) NOTICE OF ADOPTION OF A
Silver Run Wildlife Management Area) TEMPORARY EMERGENCY RULE
in Carbon County)

TO: All Concerned Persons

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

(a) The Rock Creek Wildfire is burning near Red Lodge, Montana.

(b) The Department of Natural Resources has requested the closure and the department has determined the closure is necessary because of fire suppression efforts including heavy equipment bulldozing fire lines and water and fire retardant being dropped within the Silver Run Wildlife Management Area (WMA).

(c) Recreationists within the WMA are at risk of personal injury due to water or fire retardant being dropped from aircraft or even death due to the conditions created by this rapidly spreading wildfire.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 17 of the 2013 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 20, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective August 21, 2013, when this rule notice is filed with the Secretary of State.

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

RULE I SILVER RUN WILDLIFE MANAGEMENT AREA TEMPORARY
EMERGENCY CLOSURE

(1) The Silver Run Wildlife Management Area is located in Carbon County.

(2) The Silver Run Wildlife Management Area is closed in its entirety to all public occupation, hunting, and recreation.

(3) This rule is effective as long as there is fire threatening the Silver Run Wildlife Management Area.

AUTH: 2-4-303, 23-1-106, MCA
IMP: 2-4-303, 23-1-106, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Robert Gibson, Department of Fish, Wildlife and Parks, 2300 Lake Elmo Dr., Billings, MT 59105; fax (406) 248-5026; or e-mail bgibson@mt.gov. Any comments must be received no later than 5:00 p.m. on October 11, 2013.

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

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

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption of the above-referenced temporary emergency closure will not significantly and directly impact small businesses.

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

/s/ Zach Zipfel
Rule Reviewer

Certified to the Secretary of State August 21, 2013.

BEFORE THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the adoption of a)
temporary emergency rule closing a) NOTICE OF ADOPTION OF A
portion of the Fish Creek Wildlife) TEMPORARY EMERGENCY RULE
Management Area in Mineral County)

TO: All Concerned Persons

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

(a) The Nemote Wildfire is burning within the Fish Creek Wildlife Management Area.

(b) The department has determined the closure is necessary because current weather conditions and moderately steep terrain are causing erratic fire behavior. Fire suppression efforts include engines on the ground and a helicopter with water being dropped within the Fish Creek Wildlife Management Area (WMA).

(c) Recreationists within the WMA are at risk of personal injury due to water being dropped from aircraft, collisions with large equipment on the roads, or even death due to the conditions created by this rapidly spreading wildfire.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 17 of the 2013 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 20, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective August 26, 2013, when this rule notice is filed with the Secretary of State.

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

RULE I FISH CREEK WILDLIFE MANAGEMENT AREA TEMPORARY
EMERGENCY CLOSURE

(1) The Fish Creek Wildlife Management Area is located in Mineral County.

(2) The portion of the Fish Creek Wildlife Management Area north of Interstate 90 is closed in its entirety to all public occupation, hunting, and recreation.

(3) This rule is effective as long as there is fire within the Fish Creek Wildlife Management Area.

AUTH: 2-4-303, 23-1-106, MCA

IMP: 2-4-303, 23-1-106, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59720; fax (406) 444-7456; or e-mail jesssnyder@mt.gov. Any comments must be received no later than October 11, 2013.

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

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

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption of the above-referenced temporary emergency closure will not significantly and directly impact small businesses.

/s/ Mike Volesky

Mike Volesky

Deputy Director

Department of Fish, Wildlife and Parks

/s/ Aimee Fausser

Rule Reviewer

Certified to the Secretary of State August 26, 2013.

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

In the matter of the adoption of a)
temporary emergency rule closing) NOTICE OF ADOPTION OF A
Rosebud Battlefield State Park in) TEMPORARY EMERGENCY RULE
Bighorn County)

TO: All Concerned Persons

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

(a) A wildfire is burning within the Rosebud Battlefield State Park.

(b) The department has determined the closure is necessary because current weather conditions are causing erratic fire behavior. Fire suppression efforts include engines on the ground.

(c) Recreationists within the Rosebud Battlefield State Park are at risk of personal injury due to collisions with large equipment on the roads, smoldering snags, unstable burnt trees, hot ashes, or even death due to the conditions created by this spreading wildfire.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following temporary emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties, and published as a temporary emergency rule in Issue No. 17 of the 2013 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on September 20, 2013, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective August 27, 2013, when this rule notice is filed with the Secretary of State.

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

RULE I ROSEBUD BATTLEFIELD STATE PARK TEMPORARY
EMERGENCY CLOSURE

(1) The Rosebud Battlefield State Park is located in Bighorn County.

(2) The Rosebud Battlefield State Park is closed in its entirety to all public occupation.

(3) This rule is effective as long as the fire is burning within Rosebud Battlefield State Park.

AUTH: 2-4-303, 23-1-106, MCA
IMP: 2-4-303, 23-1-106, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59720; fax (406) 444-7456; or e-mail jesssnyder@mt.gov. Any comments must be received no later than October 11, 2013.

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

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

9. With regard to the requirements of Chapter 318, Section 1, Laws of 2013, the department has determined that the adoption of the above-referenced temporary emergency closure will not significantly and directly impact small businesses.

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

/s/ Zach Zipfel
Rule Reviewer

Certified to the Secretary of State August 27, 2013.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION AND
RULE I concerning large-stakes card) AMENDMENT
game tournaments, NEW RULE II)
concerning small-stakes card game)
tournaments, and amendment of ARM)
23.16.102, 23.16.103, 23.16.107,)
23.16.110, 23.16.401, 23.16.407,)
23.16.502, 23.16.1101, 23.16.1201,)
23.16.1216, 23.16.1224, 23.16.1225,)
23.16.1232, 23.16.1237, 23.16.1240,)
23.16.1701, 23.16.1702, 23.16.1703,)
23.16.1704, 23.16.1705, 23.16.1712,)
23.16.1713, 23.16.1714, 23.16.1716,)
23.16.1719, 23.16.1826, 23.16.1826A,)
23.16.1906, 23.16.1913, 23.16.1914,)
23.16.1915, 23.16.1916, 23.16.1916A,)
23.16.1918, 23.16.1929, 23.16.2001,)
and 23.16.3103 concerning grounds for)
denial of gambling license, permit or)
authorization; confiscation of temporary)
dealer license; card game tournament)
rules; how to acquire the official)
Montana poker rule book; player)
restrictions; dealer restrictions; house)
players; operation of the games – table)
stakes; betting; posting of rules and pot)
limits; definitions; sports pool cards;)
maximum price of sports pool chances;)
determination of sports pool winners –)
prizes; authorized sports pool prize)
value; sports tab game conduct;)
maximum price of sports tab; sports tab)
game prize value; sports tab game seller)
record keeping requirements – decal)
inventories; quarterly reporting)
requirements; reporting frequency for)
approved Tier I automated accounting)
systems; general software specifications)
for video gambling machines; testing)
fees; repairing machines – approval;)
casino night prizes; and web site)
address access to forms)

TO: All Concerned Persons

1. On July 25, 2013, the Department of Justice published MAR Notice No. 23-16-232 regarding the public hearing on the proposed adoption and amendment of the above-stated rules at page 1302, 2013 Montana Administrative Register, Issue Number 14.

2. The Department of Justice has adopted Rule I (23.16.1102) and Rule II (23.16.1103) and amended ARM 23.16.102, 23.16.103, 23.16.107, 23.16.110, 23.16.401, 23.16.407, 23.16.502, 23.16.1101, 23.16.1201, 23.16.1216, 23.16.1224, 23.16.1225, 23.16.1232, 23.16.1237, 23.16.1240, 23.16.1701, 23.16.1703, 23.16.1705, 23.16.1712, 23.16.1713, 23.16.1714, 23.16.1716, 23.16.1719, 23.16.1826, 23.16.1826A, 23.16.1906, 23.16.1913, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1916A, 23.16.1918, 23.16.1929, 23.16.2001 and 23.16.3103 as proposed.

3. The department amends the remaining rules with the following changes, stricken matter interlined, new matter underlined:

23.16.1702 SPORTS POOL CARD (1) through (5) remain as proposed.

(6) A sports pool card must be retained by the person conducting the sports pool for at least ~~one year~~ 90 days from the date of the sports event, or last event in a series of sports events, whichever occurs first, upon which the sports pool was based.

23.16.1704 DETERMINATION OF SPORTS POOL WINNERS - PRIZES

(1) and (2) remain as proposed.

(a) Where the prize awarded is merchandise, the purchase price paid for the item(s) of the merchandise prize is considered to be the value of the prize. Proof of the purchase price of the item(s) of the merchandise prize shall be retained for a period of at least ~~one year~~ 90 days from the date of the sports event.

(b) through (4) remain as proposed.

4. A public hearing was held on August 15, 2013. Oral comments were received from Ronda Wiggers, Montana Coin Machine Operators Association (MCMOA), who spoke in support of the proposed rules with the exception of the proposed change to ARM 23.16.1702(6). Ms. Wiggers stated that she and the MCMOA oppose any change to the length of time for sports pool board retention. Written comments were received from Neil Peterson, Gaming Industry Association of Montana (GIA) which also supported the proposed rules with the exception of the proposed change to ARM 23.16.1702(6). Additionally, during the Gaming Advisory Council meeting on June 28, 2013, the council recommended preserving the 30-day retention period for sports pool boards.

The department has considered the suggestions to maintain the current retention period for sports pool boards. However, because the department often finds violations of the sports pool laws, and because the legislature's increases in bet and payout limits will likely increase the popularity and number of locations

offering sports pool boards, the department will need more than 30 days to investigate violations. However, in consideration of the Gaming Advisory Council's recommendation, the department will decrease the required record retention period to 90 days for all records related to sports pool boards, including records required in ARM 23.16.1704(2)(a) to establish the value of merchandise awarded as prizes, as this may be enough time to address complaints, conduct necessary inspections, and resolve problems. The department may revise the rule to increase the record retention periods if future cases indicate a longer retention period is needed.

5. Amendment to ARM 23.16.102, 23.16.103, 23.16.107, 23.16.110, 23.16.401, 23.16.407, 23.16.502, 23.16.1216, 23.16.1224, 23.16.1225, 23.16.1232, 23.16.1237, 23.16.1701, 23.16.1702, 23.16.1712, 23.16.1716, 23.16.1719, 23.16.1826, 23.16.1826A, 23.16.1906, 23.16.1913, 23.16.1914, 23.16.1915, 23.16.1916, 23.16.1916A, 23.16.1918, 23.16.1929, 23.16.2001, and 23.16.3103 will be effective September 6, 2013. New Rule I (23.16.1102), New Rule II (23.16.1103) and amendments to 23.16.1101, 23.16.1201, 23.16.1240, 23.16.1703, 23.16.1704, 23.16.1705, 23.16.1713, and 23.16.1714, will become effective on October 1, 2013.

By: /s/ Tim Fox
TIM FOX
Attorney General
Department of Justice

/s/ Matthew T. Cochenour
MATTHEW T. COCHENOUR
Rule Reviewer

Certified to the Secretary of State August 26, 2013.

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

In the matter of the amendment of)	NOTICE OF AMENDMENT,
ARM 24.159.301 definitions,)	ADOPTION, AND REPEAL
24.159.1405, 24.159.1412 through)	
24.159.1414, 24.159.1418,)	
24.159.1427, 24.159.1428,)	
24.159.1461, 24.159.1463,)	
24.159.1464, 24.159.1467,)	
24.159.1468, 24.159.1470,)	
24.159.1475, 24.159.1480, and)	
24.159.1485 advanced practice)	
registered nurses, 24.159.2102)	
biennial continuing education credits,)	
the adoption of NEW RULES I and II)	
APRN practice and competence)	
development, and the repeal of)	
24.159.1404, 24.159.1411,)	
24.159.1424, 24.159.1462,)	
24.159.1466, and 24.159.1490)	
standards related to APRNs)	

TO: All Concerned Persons

1. On April 11, 2013, the Board of Nursing (board) published MAR Notice No. 24-159-77 regarding the public hearing on the proposed amendment, adoption, and repeal of the above-stated rules, at page 490 of the 2013 Montana Administrative Register, Issue No. 7.

2. On May 6, 2013, a public hearing was held on the proposed amendment, adoption, and repeal of the above-stated rules in Helena. Several comments were received by the May 14, 2013, deadline.

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

4. GENERAL COMMENTS: Several commenters expressed general approval or disapproval of one or more rule changes contained in the notice. The board appreciates the active participation of all those who provided comments. The board has adopted the rule amendments, proposed new rules, and the repeal of the rules as shown in the proposal notice, with the exception of ARM 24.159.1414, which the board has determined to take back to the rules committee for additional modifications.

COMMENT 1: Several commenters asserted that Certified Registered Nurse Anesthetists (CRNAs) have been legally performing chronic pain management for over a decade in a safe and effective manner. These commenters cited a recent poll by the Montana Association of Nurse Anesthetists (MTANA), in response to which 49 percent of Montana's CRNAs reported they are currently providing some kind of chronic pain management as part of their practice. Along the same idea, a number of commenters asserted that there is no known difference in the rates of complication between CRNAs licensed by the Montana Board of Nursing and anesthesiologists licensed by the Montana Board of Medical Examiners.

RESPONSE 1: The board agrees that chronic pain management is an established part of the CRNA's scope of practice. In addition, the board is not aware of any complaint to have come against any CRNA for at least the past five years that alleged a failure to practice competently or for exceeding the CRNA's scope of practice. This indicates to the board that CRNAs are practicing within the scope of their licensure in a safe and competent manner. The board is unaware of any studies comparing the rates of complication between CRNAs and anesthesiologists in relation to their respective scopes of practice, and the board believes the current scope of practice is adequately protecting the public.

COMMENT 2: Several commenters asserted that chronic pain management is a critical service in Montana, especially in the less populated areas where patient access to licensed anesthesiologists is insufficient to meet patient needs. The commenters stated that Ronan, Anaconda, and even Butte lack physicians to provide interventional pain management services in these communities.

RESPONSE 2: The board agrees that the existing practice of CRNAs in the area of chronic pain management is critical, so that adequate pain management services continue to be available throughout Montana, especially in rural areas of Montana.

COMMENT 3: Several commenters urged the board to amend the rules as proposed, in particular ARM 24.159.1480, as an appropriate step toward implementing the National Council of State Boards of Nursing's (NCSBN) Consensus Model (the "Consensus Model"). The commenters asserted the proposed rule changes do not expand or alter the scope of practice for Advanced Practice Registered Nurses (APRNs).

RESPONSE 3: The board notes that the Consensus Model is an expression of the national standard of advanced registered nursing practice and is the product of the widely collaborative efforts of educators, certifying agencies, national professional organizations, and regulatory agencies of advanced practice registered nursing across the nation. As national consensus of what the "field of advanced practice registered nursing" is, the Consensus Model provides the best expression of what the scope of practice is for the advanced practice registered nurse in Montana.

The board affirms that the board's intent is to continue to implement the Consensus Model through rulemaking efforts so as to express, not expand, the scope and standards of practice applicable to advanced practice registered nursing.

The board further views the increase of specificity in rule as tightening and clarifying the APRN scope and standards so that APRNs can better understand their boundaries, thereby enhancing patient safety.

COMMENT 4: Some commenters pointed out, in support of CRNA qualifications to perform chronic pain management, that CRNAs must receive continuing education in order to maintain their certification, and in addition, each nurse must also meet requirements for credentialing and clinical privileges established by each facility where the nurse provides services. Moreover, some commenters argued that while the certification process is varied among licensed health care professionals, demonstration of competency for all such professionals is provided through hospital privileging criteria, quality assurance programs, and peer review.

RESPONSE 4: The board views these comments as being factually correct, and further notes that the APRN must be certified to practice in a role and upon a population focus, and the combination of which is an area of specialization for the nurse. Certification by a national certifying body ensures the APRN's qualifications to practice "in a field of advanced practice registered nursing," 37-8-409, MCA, which is the legislature's expression of the APRN's scope of practice.

Currently, the preparation for becoming certified as an APRN includes (1) a bachelor of science degree in nursing, followed by (2) a master's or doctoral degree in nursing in the selected specialty area of practice, and finally (3) testing and certification by a national certifying body for the specialty area of practice. APRNs must thereafter maintain competencies through required continuing education courses and must recertify with the national certifying body on a regular basis.

COMMENT 5: Several commenters noted that, although Medicare providers Noridian Administrative Services (contractor currently administering Medicare for Montana and ten other western states), and Wisconsin Physicians Services temporarily refused to reimburse CRNAs for chronic pain management services in or about 2011, Medicare enacted a final rule on January 1, 2013, authorizing Medicare reimbursements for chronic pain management by CRNAs in states where chronic pain management is within the scope of practice, and Noridian began reimbursing CRNAs under Medicare in Montana once again.

RESPONSE 5: The board acknowledges these comments are factually correct. The fact that Noridian reimburses CRNAs for chronic pain management services in Montana supports the board's position that referring to "chronic pain management" in amended ARM 24.159.1480 is simply a clarification of the current scope of practice in Montana.

COMMENT 6: Some commenters reminded the board that a past report of the Institute of Medicine called for APRNs to practice to the fullest extent of their scope and called for a "Consensus Model" to establish standards and a national scope of practice for APRNs. These commenters said that the Consensus Model has been developed by incorporating each individual APRN's national professional organization's practice standards and guidelines – not the opinions of NCSBN's

members – and that the Consensus Model expresses the existing nationally standardized scope of practice for CRNAs. The commenters asserted that the proposed amendments to ARM 24.159.1480 are consistent with the Consensus Model and do not expand the scope of practice of APRNs.

RESPONSE 6: The board believes these comments collectively express the board's position very well with respect to the Consensus Model as providing the national standardized scope of practice, which is not an expansion or other modification of the scope of practice for APRNs in Montana.

COMMENT 7: Several commenters pointed out that the general language describing the scope of practice of all APRNs limits the scope of practice to the individual's area of certification and, further, to the individual's education and skills, countering the position that the amendments expand into the practice of medicine. The commenters stated that the proposed language used to describe the scope of practice does not imply that any CRNA may practice to the same degree as an anesthesiologist in the generally described area of chronic pain management.

RESPONSE 7: The board concurs with these comments. APRNs are held accountable to know the limits of their scope of practice, which is determined by their preparation. The board wishes to emphasize that the scope of a CRNA's practice within the generally described specialty area of chronic pain management is not identical to the scope of practice of an anesthesiologist within the same specialty area.

Like a general physician who may provide limited services in the area of chronic pain management before determining whether to consult with or refer to an anesthesiologist, the CRNA may, likewise, within the CRNA's scope of practice, offer appropriate services for patients. The board holds all APRNs, including CRNAs, accountable for knowing the limits of their respective scope of practice, which is why the clarification of the existing scope is important as direction for the CRNA and protection to the patient.

COMMENT 8: One commenter asserted that the proposed reduction of APRNs' two-year continuing education (CE) requirement to 24 contact hours in ARM 24.159.2102 means that the 40 credits required biennially for APRN certification (e.g., to maintain national certification as a CRNA) will be enough to cover Montana's requirements for licensure and prescriptive authority.

RESPONSE 8: The proposed reduction in board-required CE is not, as a practical matter, a reduction to the number of CE hours required of APRNs in Montana. This is because each APRN must be certified, each certifying body requires CE hours as part of the periodic recertification process, and Montana's rules allow an offset for CE obtained for recertification. In other words, the periodic recertification required of APRNs has always ensured, and will continue to ensure, that competencies are maintained by APRNs.

In addition, the Consensus Model indicates that CE specific to pharmacology should be required, which the board has implemented by increasing CE relative to

pharmacology from 10 to 12 hours every two years. The board also notes that many states do not require CE of their APRNs, nor does the Montana Board of Medical Examiners, in recognition that the certifying bodies require it.

COMMENT 9: One commenter questioned whether the phrase "quality assurance plan," as expressed in ARM 24.159.1427 and New Rule II (APRN Competence Development), should be amended to read "competency plan."

RESPONSE 9: The board believes it is important to continue referring to the quality assurance plan as one part of an APRN's competency development plan. The term "quality assurance" has an established meaning to licensees that is not synonymous with "competency plan," and the suggested substitution would change the meaning and intent of the rule. The board is adopting New Rule II exactly as proposed.

COMMENT 10: A few commenters pointed out that as explained by the Montana Supreme Court in 2007, the scope of practice for CRNAs in Montana is independent of and/or collaborative with physicians. These commenters stated that chronic pain management, as part of the CRNA's scope of practice, is likewise independent of and/or collaborative with physicians.

RESPONSE 10: The board agrees that the CRNA's practice is independent of and/or collaborative with physicians, and the CRNA's scope of practice historically has included, and continues to include, chronic pain management.

COMMENT 11: Several commenters pointed out that the only arguments being submitted against allowing CRNAs to perform chronic pain management come from those who compete with CRNAs, also pointing out that the Montana Hospital Association (MHA) favors the rule change.

RESPONSE 11: The board acknowledges the comments and that the MHA is in favor of the rule changes. However, the source of any comment does not in and of itself present a basis for rejecting or accepting the proposed rule amendments, new rules, or repeal of rules.

COMMENT 12: Although many commenters wished to recognize that CRNAs are important members of the anesthesia care team, several commenters stressed the complexities involved in diagnosing and treating chronic pain, including complex prescription medication regimens and the frequent necessity of a multidisciplinary approach, explaining that such complexities have earned pain medicine recognition as its own medical subspecialty by the American Board of Medical Subspecialties. Some groups and organizations recognizing chronic pain management as a subspecialty within the practice of medicine include the American Medical Association, the American Society of Anesthesiologists, the Montana Society of Anesthesiologists, the American Society of Interventional Pain Practitioners, and the Montana Board of Medical Examiners.

RESPONSE 12: The board recognizes that these comments are factually accurate as they relate to the practice of medicine, but do not preclude advanced practice nursing within the area of chronic pain management. The board appreciates the sincere and collegial recognition and affirmation that CRNAs are an important part of the multidisciplinary approach to diagnosing and treating chronic pain.

COMMENT 13: A few commenters generally opposed the practice of CRNAs in the area of "acute and chronic pain management," alleging that CRNAs lack unspecified qualifications. Other commenters said that chronic pain management requires extensive specialty education, training, and clinical experience, none of which is received in the preparation of a CRNA; that the American Association of Nurse Anesthetist's (AANA's) Standards for Accreditation of Nurse Anesthesia Education Programs provide that no clinical experience with pain management is required as part of nurse anesthesia training; or that weekend courses and on-the-job training in pain management cannot substitute for years of medical training in diagnostic assessment, anatomy in normal or abnormal states, disease presentation, and in prescribing treatment necessary to safely perform chronic pain interventions.

RESPONSE 13: The board recognizes that there are significant differences between the preparation of CRNAs and the training and preparation of anesthesiologists. However, the board concluded that the training and preparation of CRNAs is adequate and appropriate for their scope of practice in anesthesia services, including the practice of chronic pain management. The CRNA receives specialized advanced practice nurse training on chronic pain management, which includes instruction and clinical experience. For example, the curriculum for accredited nurse anesthesia programs includes instruction on the advanced principles in nurse anesthesia and pain management. The AANA reports in its Position Statement number 2.11 "Pain Management," as follows:

The Council on Accreditation of Nurse Anesthesia Education Programs (the "COA") standards mandate nurse anesthesia programs provide content within, but not limited to, the following areas: anatomy, physiology, pathophysiology, pharmacology, and pain management. These areas of study provide the foundation for understanding pain and pain treatment. Similarly, the COA requires that nurse anesthesia students obtain clinical experiences in regional anesthetic techniques (i.e., spinal, epidural, and peripheral). These techniques (e.g., epidural, peripheral) are employed to alleviate both acute pain and chronic pain. The knowledge and skills obtained during a nurse anesthesia educational program, therefore, serve as the foundation for a CRNA's engagement in treating either acute or chronic pain.

Furthermore, the nurse's training enables the nurse to take a holistic approach to treating the patient, contributing to the advantage of a multidisciplinary approach that incorporates the CRNA in the treatment of chronic pain management.

COMMENT 14: Some commenters expressed concern that "specialized physician training" is necessary to prevent potentially lethal side effects and medication dependency, and that "medical training" is necessary to diagnose and formulate a treatment plan for patients suffering from chronic pain, perform interventional

procedures to diagnose and treat chronic pain, and respond to complications of treatment.

RESPONSE 14: Again, the board would point to the CRNA's preparation, which includes specialized advanced practice nursing training that qualifies the CRNA to practice within the area of chronic pain management.

COMMENT 15: One commenter differentiated between discrete procedures for pain management and the more comprehensive meaning of the phrase "chronic pain management," suggesting that while a discrete procedure related to the management of chronic pain may be performed by a CRNA, especially when done in collaboration with a physician, the practice of chronic pain management encompasses a broader practice that comprises a subspecialty of the practice of medicine that falls outside the scope of practice of CRNAs.

RESPONSE 15: The board believes that the preparation of CRNAs does not limit CRNAs to the performance of discrete procedures. The board's position on this issue is supported by the national professional organization of CRNAs, as well as the Consensus Model. The board also refers these commenters to responses provided to several of the other comments, in particular responses 7, 13, and 14.

COMMENT 16: A few commenters pointed out that data from the Centers for Medicare and Medicaid Services (CMS) shows that out of 51,986 total pain procedures performed in Montana in 2010, only 235 were "Rural Procedures," only 17 of the 235 were performed by CRNAs, all of which were designated by CMS as acute pain treatments. One of these commenters also asserted, anecdotally, that it was believed that only a select few CRNAs currently perform some pain procedures.

RESPONSE 16: The board sees this limited statistical information as providing very little to rely upon regarding current practice of CRNAs in Montana. For example, no explanation was offered as to how the terms "acute" or "rural" were defined by CMS, and only one portion of one year of data was offered. On the other hand, the board has received sufficient comments from practicing CRNAs and other medical professionals to be convinced there is no meaningful dispute that CRNAs have been practicing chronic pain management in Montana for well over a decade, within their scope of practice.

COMMENT 17: Several commenters stated that two major Medicare contractors (Noridian Administrative Services and Wisconsin Physicians Services) collectively serve 19 states, and that these Medicare contractors have concluded that nurse anesthetists do not have the necessary training to qualify for reimbursement of chronic pain management services.

RESPONSE 17: The board was provided specific citation to authority that these commenters have outdated information. In fact, Noridian, in response to changes to Medicare rules, corrected its course of action in January 2013, and returned to its practice of reimbursing CRNAs for Medicare claims in relation to chronic pain

management services in Montana. Although Noridian's reimbursement of CRNAs in Montana indicates Noridian's assessment that CRNAs are already authorized to practice in the area of chronic pain management in Montana, the board notes that Medicare contractors are not certifying bodies or national professional organizations for CRNAs and do not determine the scope of practice for CRNAs.

COMMENT 18: One commenter said that the board's attempt to simplify its description of an APRN's scope of practice does not simplify the qualifications that are necessary for competently practicing within the full breadth of "chronic pain management," most importantly "interventional pain management."

RESPONSE 18: The board meant for this particular rule change to clarify, not simplify, and to further implement the Consensus Model, which is consistent with the scope of practice as stated by the national professional organizations.

COMMENT 19: Some commenters said that "interventional pain medicine" is "chronic pain management" and such is the practice of medicine. The commenters stated that Oklahoma and Missouri laws define interventional pain management as the practice of medicine, that Louisiana requires physician supervision of interventional pain management, and that Louisiana and Iowa have promulgated regulations defining interventional pain management as the practice of medicine. The commenters also referenced a Louisiana Supreme Court holding that nurse anesthetists lack the education or training to engage in chronic pain management.

RESPONSE 19: The board acknowledges that different states will have different laws, which are not applicable to Montana. These commenters are encouraged to review the board's responses to comments regarding CRNA preparation and scope of practice as defined by CRNA-certifying bodies and national professional organizations, and as adopted in the Consensus Model.

COMMENT 20: Two commenters asserted that New Rule I unlawfully expands the APRN's scope of practice because the "interpretation of imaging" is the practice of medicine requiring extensive medical training. One commenter asked whether the board has considered the medical legal risk of having APRNs interpret results of laboratory, imaging, and/or diagnostic studies.

RESPONSE 20: The board is primarily concerned about patient care, i.e., the safety of the public. Just as in the area of chronic pain management with respect to CRNAs, APRNs are generally qualified within their scope of practice to interpret, and are currently interpreting, results of laboratory, imaging, and/or diagnostic studies. This change, like the change to the CRNA rule, clarifies the existing scope of practice for APRNs using language approved by the national professional organizations and incorporated into the Consensus Model. By adding clarity, these changes are expected to enhance both patient safety and legal defensibility of the rules.

COMMENT 21: Several commenters stated that the scope of practice for any licensed profession may not be expanded simply through the rulemaking process, and asserted that the proposed amendments to the rules addressing APRN scope of practice do not simply express the existing scopes of practice, but effectively expand those scopes.

RESPONSE 21: The board understands that it may not expand or limit the scope of practice of APRNs in Montana, and the board strongly disagrees with each and all assertions that the board has proposed to do so with the proposed rule changes. The proposed rule amendments relative to APRN scopes of practice merely clarify the rules for APRNs and express the longstanding, existing practice in Montana. Such clarification offers more clear delimitations or boundaries, but neither expands nor narrows the available scope of practice, and thereby increases the safety of our public without further restricting access to care.

COMMENT 22: Some commenters said that including gynecology, neonatal care, and male reproductive health care within the scope of practice of Certified Nurse Midwives (CNM) in ARM 24.159.1475 is an unlawful expansion of the scope of practice of CNMs, and offered alternative language to address this concern. The commenters further suggested that such a broad definition of those services encompasses the practice of medicine.

RESPONSE 22: The board understands that CNMs in Montana currently practice in the areas of "gynecologic care, . . . care of the newborn . . . [and] treating the male partner of their female clients for sexually transmitted diseases and for reproductive health," which is the proposed rule language. For example, "care of the newborn" is what necessarily immediately follows childbirth and does not add a new aspect to the existing scope of practice for CNMs.

Also, the proposed language is consistent with both the national professional organization for CNMs and the Consensus Model. The American College of Nurse Midwives (ACNM) is the national professional organization for CNMs and is an authority on what the scope of practice is for CNMs. The ACNM defines the scope of practice for CNMs as follows:

"Midwifery as practiced by [CNMs] encompasses a full range of primary health care services for women from adolescence beyond menopause. These services include primary care, gynecologic and family planning services, preconception care, care during pregnancy, childbirth and the postpartum period, care of the normal newborn during the first 28 days of life, and treatment of male partners for sexually transmitted infections."

The board notes that the Consensus Model provides the following definition of a CNM:

"The certified nurse-midwife provides a full range of primary health care services to women throughout the lifespan, including gynecologic care, family planning services, preconception care, prenatal and postpartum care, childbirth, and care of the newborn. The practice includes treating the male partner of their female clients for sexually transmitted disease and reproductive health. This care is provided in diverse settings, which may include home, hospital, birth center, and a

variety of ambulatory care settings including private offices and community and public health clinics."

The board believes that the proposed changes are consistent with the scope of practice as it currently exists in Montana and as expressed by the ACNM and the Consensus Model.

COMMENT 23: One commenter opposed any expansion of the CRNAs' scope of practice into "chronic pain management," and suggested the board amend ARM 24.159.1480 to specifically require that CRNAs practice pain management in consultation with or when referring patients to other health care providers.

RESPONSE 23: The board's rules already state that an APRN's practice is "collaborative and/or independent." Because the commenter's suggested language addition would not substantively change the meaning of the rule, the board is amending the rule exactly as proposed.

COMMENT 24: Some commenters said that the phrase "medical diagnosis" in ARM 24.159.1470, regarding a Certified Nurse Practitioner's scope of practice, should be replaced with the phrase "nursing diagnosis," and that the words "medical and" in the proposed New Rule I (APRN Practice) should be removed. This commenter explained that including the word "medical" in Board of Nursing rules defining the scope of practice is endorsing the practice of medicine (i.e., physician practice) by nurses.

RESPONSE 24: The board directs these commenters to the existing rule, ARM 24.159.1470, which has, for years, included a reference to "medical diagnosis." That term is not an expression of the APRN's scope of practice, but it is a part of the taxonomy currently used by all APRNs when ordering medical equipment or treatment for patients. Use of the term should not be construed as indicating the practice of medicine. Rather, a medical diagnosis is a foundational part of the nursing process for all APRNs' specialty roles in Montana.

COMMENT 25: Two commenters stated that the board's reasonable necessity statements failed to address rule changes that the commenters asserted expand the scopes of practice for CRNAs, CNSs, and CNMs. The commenters further opined that this omission violated the Montana Administrative Procedure Act (MAPA).

RESPONSE 25: The board disagrees that any of the scopes of practice were proposed to be expanded through the proposed rule changes, and encourages the commenters to refer to previous responses that demonstrate how the scopes of practice are being clarified but not changed. The board disagrees that it has violated MAPA. The board began the process of rule amendments to Subchapter 14 of its rules in April of 2011 with a subcommittee appointed by the board under the leadership of APRN board member Ms. Laura Weiss. This subcommittee met in 14 open and noticed meetings over the period of approximately 15 months until amendments were approved by the full board for the MAR Notice No. 24-159-77 in

July 2012. The board has substantially and conscientiously complied with MAPA with respect to rules addressing APRN scopes of practice.

COMMENT 26: While expressing support for the idea of increasing the educational standard for becoming licensed as an APRN in Montana, several commenters asserted that the lack of a "grandfather" clause would effectively invalidate the licenses of a majority of Montana's APRNs. Other commenters asserted that the proposed language would prohibit an APRN from becoming licensed in Montana who was educated and certified, but not licensed in Montana prior to the rule change, which would effectively limit Montanans' access to service. Various commenters pointed to NCSBN's APRN Uniform Requirements, the NCSBN's APRN Model Act/Rules and Regulations, or the Consensus Model in support of why grandfathering APRNs should be provided in ARM 24.159.1414. In addition, one commenter suggested that, in violation of MAPA, no statement of reasonable necessity exists for why the board is removing the grandfathering of currently certified APRNs.

RESPONSE 26: The board intended to maintain grandfathering of currently certified APRNs. However, the confusion expressed by those to whom these rules are directed, as well as other concerned persons and entities, indicates that the proposed amendments to ARM 24.159.1414 should not be finalized at this time. The board is not proceeding with the proposed amendments to ARM 24.159.1414 at this time, so that the amendments may be reconsidered in a later rules project.

COMMENT 27: Two commenters said that increasing the number of annual continuing education hours in pharmacology from 10 to 12 is not necessary, because advancements in techniques and medications do not justify more hours of continuing education for the APRN.

RESPONSE 27: The board's decision to increase these hours of continuing education is consistent with requirements proposed in the Consensus Model. The board is of the opinion that the increase in continuing education is relevant and appropriate and, especially in light of removing the face-to-face component, obtaining the increased amount of continuing education is not an onerous requirement.

COMMENT 28: One commenter said that requiring licensees to add the letters "APRN" before each certification is confusing and cumbersome.

RESPONSE 28: The board understands the burden being placed upon the licensees, but maintains that the proposed change is an appropriate step toward implementing the Consensus Model. The board believes that this step will assist the board to educate the consumer and provide greater accountability of the licensee to the public.

COMMENT 29: A couple of commenters opposed reducing continuing education requirements of APRNs to the level of licensed practical nurses and registered

nurses while, at the same time, expanding the scopes of practice for CNSs, CNMs, and CRNAs. The reduction in continuing education does not take into account the ongoing educational needs for health care professionals.

RESPONSE 29: The board in several earlier responses has explained that no APRN's scope is being changed. As to comments about reducing the continuing education requirement for APRNs, the board also disagrees that such is the case and encourages these commenters to review the board's response to Comment 8.

COMMENT 30: A few commenters suggested that, until collaborative meetings can be conducted by the Board of Nursing, the Board of Medical Examiners, and certain industry organizations, the board should delay implementation of the proposed rule changes addressing the scope of practice for APRNs.

RESPONSE 30: The board would like to remind the commenters that the board appointed a committee that conducted 14 public meetings over a period of 15 months before these rules were accepted at a publicly noticed board meeting, after which the proposal notice was filed. Further, the underlying concerns as expressed by these commenters in their written and oral presentations have been specifically addressed in the board's responses to each of those comments. The board is amending and adopting the rules addressing APRN scope of practice exactly as proposed.

5. The board has amended ARM 24.159.301, 24.159.1405, 24.159.1412, 24.159.1413, 24.159.1418, 24.159.1427, 24.159.1428, 24.159.1461, 24.159.1463, 24.159.1464, 24.159.1467, 24.159.1468, 24.159.1470, 24.159.1475, 24.159.1480, 24.159.1485, and 24.159.2102 exactly as proposed.

6. The board has adopted NEW RULES I (24.159.1406) and II (24.159.1469) exactly as proposed.

7. The board has repealed ARM 24.159.1404, 24.159.1411, 24.159.1424, 24.159.1462, 24.159.1466, and 24.159.1490 exactly as proposed.

8. The board is not amending ARM 24.159.1414 as proposed.

BOARD OF NURSING
HEATHER O'HARA, RN, PRESIDENT

/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 August 26, 2013

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.210.426 and 24.210.805)
trust account requirements,)
24.210.430 internet advertising rules,)
and 24.210.601 general license)
administration requirements)

TO: All Concerned Persons

1. On April 11, 2013, the Board of Realty Regulation (board) published MAR Notice No. 24-210-38 regarding the public hearing on the proposed amendment of the above-stated rules, at page 508 of the 2013 Montana Administrative Register, Issue No. 7.

2. On May 6, 2013, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the May 14, 2013, deadline.

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

COMMENT 1: Three commenters supported the proposed amendment to ARM 24.210.426(2), that clarifies that brokers will not be disciplined for negative trust account balances as a result of a deposit that was dishonored after the broker verified available funds.

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

COMMENT 2: Two commenters expressed concern about moving the records retention language from ARM 24.210.426(5)(l) to ARM 24.210.601. The commenters stated that it is logical to locate all document retention requirements in one section and argued that retention of trust account documents should be within the trust account section, rather than the general licensing requirements rule.

RESPONSE 2: The board previously determined that moving the document retention requirements from ARM 24.210.426 to ARM 24.210.601 does clarify that all licensees are required to retain real estate transaction documents. Under current rules, it could be interpreted that only brokers who operate a trust account are required to retain the described real estate documents.

The board notes that the language of the amendments is not limited merely to trust account records, but also speaks to "trust account records and related real estate documents, including sales contracts, leases, and options, agency

agreements, closing statements, and other real estate related documents." Therefore, it is logical to have the language in the general license administration section and the board is amending these rules exactly as proposed.

COMMENT 3: Three commenters supported the proposed amendment to ARM 24.210.430(1).

RESPONSE 3: See Response 1.

COMMENT 4: Two commenters stated that licensees are confused as to the meaning of ARM 24.210.430(4)(c) and described the issues requiring clarification.

RESPONSE 4: The board is not proposing in this notice to amend any language in (4)(c), and the proposed changes merely reformat existing language for clarity and ease of use. The board may consider clarifying the language in (4)(c) in a future rules project.

COMMENT 5: Three commenters supported the direction of the board's proposed amendment of ARM 24.210.430(4)(e), but stated that the amended language is unclear as to what information the licensee is responsible for updating, and where it must be updated. The commenters asked if licensees should be responsible to only correct information on their own internet sites, or also correct information on third-party web sites. Commenters also suggested that the amendment could be interpreted to mean that the licensee is responsible for updating internet advertising, even if the licensee may not have anything to do with the misrepresentation.

RESPONSE 5: In this rule's reasonable necessity statement, the board clarified that the licensee would be responsible only for advertising content that the licensee can control. The board believes that the existing language, along with the proposed amendments, clearly provides that a licensee is only responsible for advertising that they can control. To the extent that the proposed language causes confusion, if any, the board believes that the confusion could be lessened by changing the disjunctive "or" to the conjunctive "and." The board concluded that such a revision is within the original intent of the rule change proposed by the board and is amending this rule accordingly.

COMMENT 6: Three commenters supported the proposed amendment to ARM 24.210.430(7).

RESPONSE 6: See Response 1.

COMMENT 7: Three commenters supported the proposed amendments to ARM 24.210.601, but stated that confusion exists among licensees as to what documents are required to be retained. The commenters suggested the board define or clarify how to meet the document retention requirement.

RESPONSE 7: The board is unable to further modify the proposed language in this rule package without exceeding the scope of the initial rule notice and violating public notice standards of the Montana Administrative Procedure Act. The board may consider the suggestions in a future rules project.

COMMENT 8: One commenter supported the proposed amendments to ARM 24.210.805.

RESPONSE 8: See Response 1.

4. The board has amended ARM 24.210.426, 24.210.805, and 24.210.601 exactly as proposed.

5. The board has amended ARM 24.210.430 with the following changes, stricken matter interlined, new matter underlined:

24.210.430 INTERNET ADVERTISING RULES (1) through (4)(d) remain as proposed.

(e) No licensee shall be responsible for errors or misrepresentations of others who reproduce or further disseminate the information concerning the licensee's listings, unless the licensee originated the error or misrepresentation, ~~or~~ and failed to update the information.

(5) through (7) remain as proposed.

BOARD OF REALTY REGULATION
C.E. "ABE" ABRAMSON, PRESIDING
OFFICER

/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 August 26, 2013

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of)	CORRECTED NOTICE OF
ARM 32.3.201, 32.3.501, 32.3.502,)	AMENDMENT
32.3.503, 32.3.505, 32.3.506,)	
32.3.507, and 32.3.508 pertaining to)	
definitions, official trichomoniasis)	
testing and certification requirements,)	
reporting trichomoniasis, movement)	
of animals from test-positive herds,)	
epidemiological investigation and)	
exposed herd notification, common)	
grazing and grazing associations, and)	
penalties)	

TO: All Concerned Persons

1. On June 20, 2013, the Department of Livestock published MAR Notice No. 32-13-235 pertaining to the proposed amendment of the above-stated rules at page 1008 of the 2013 Montana Administrative Register, Issue Number 12. On August 8, 2013, the department published the notice of amendment at page 1446 of the 2013 Montana Administrative Register, Issue Number 15.

2. While preparing for replacement pages, the department noticed a few grammatical and punctuation errors. The rules as amended in corrected form read as follows, deleted matter interlined, new matter underlined:

32.3.501 DEFINITIONS In this subchapter: (1) through (12)(d) remain as amended.

(e) all facilities are subject to inspection; and

(f) through (14) remain as amended.

(15) "Official trichomoniasis test" means the sampling procedure conducted by a deputy state veterinarian of the preputial content of a test-eligible bull and submitted to an approved laboratory to identify T. foetus by three weekly cultures, an individual PCR test, or another test approved by the state veterinarian. Bulls must be sexually rested for at least two weeks prior to the sample date. Official trichomoniasis identification must be placed at the time of the first test. Tests expire after 60 days or immediately upon commingling. For the culture tests:

(a) the tests must be conducted at intervals of no less than seven days between each test; and

(b) through (27) remain as amended.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, MCA

32.3.505 MOVEMENT OF ANIMALS FROM TEST-POSITIVE HERDS

(1) through (2)(b) remain as amended.

(c) bulls that have been individually tested negative to three consecutive PCR tests as per ARM 32.3.501(14)(b); and

(d) virgin heifers; and

(3) through (5)(a)(ii) remain as amended.

(iii) documented to be isolated from all bulls for 120 days, following the removal of a test-positive animals from the premises.

(b) through (6) remain as amended.

AUTH: 81-2-102, 81-2-103, MCA

IMP: 81-2-102, 81-2-108, MCA

3. The replacement pages for this corrected notice will be submitted to the Secretary of State on September 30, 2013.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay

Christian Mackay

Executive Officer

Board of Livestock

Department of Livestock

BY: /s/ George H. Harris

George H. Harris

Rule Reviewer

Certified to the Secretary of State August 26, 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 XI pertaining to)
licensure requirements for outpatient)
centers for surgical services)

TO: All Concerned Persons

1. On June 6, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-637 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 945 of the 2013 Montana Administrative Register, Issue Number 11.

2. The department has adopted New Rule I (37.106.501), II (37.106.502), III (37.106.503), IV (37.106.506), V (37.106.507), VI (37.106.508), VII (37.106.511), VIII (37.106.512), IX (37.106.513), X (37.106.514), and XI (37.106.515), as proposed.

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

COMMENT #1: One comment was received advising the department that under the Statement of Reasonable Necessity (SRN), the name of the accrediting organization was indicated as the "American Association for Ambulatory Health Care." The commenter requests that this be amended to read, "Accreditation Association for Ambulatory Health Care" in this section and in any others in which it may be incorrectly indicated.

RESPONSE #1: The department agrees. The department checked the rule text and the term is used correctly in the rule itself. It is used incorrectly in one spot of the SRN. Since the term is used correctly in the rule, the department does not need to correct the SRN.

COMMENT #2: One comment was received urging the department to add language to the proposed rule requiring the facility to have a circulating registered nurse present in any and each separate operating room and in any and each separate invasive procedure room for the duration of the procedure.

RESPONSE #2: The department agrees that the presence of a circulating nurse is an important characteristic of quality patient care. It is the department's opinion that facilities in Montana must define circulating nurse procedures based on an assessment of case complexity and patient acuity. Therefore, this rule is written

such that it allows facilities to define the level of such involvement through their written facility policy and procedures.

/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 August 26, 2013.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF ADOPTION,
Rule I, amendment of ARM)	AMENDMENT, AMENDMENT AND
44.3.1101, 44.3.2004, 44.3.2005,)	TRANSFER, AND TRANSFER
44.3.2014, 44.3.2015, 44.3.2110,)	
44.3.2111, 44.3.2114, 44.3.2203, and)	
44.3.2304, the amendment and)	
transfer of 44.3.1403, 44.3.1716, and)	
44.3.2016, and the transfer of)	
44.3.1715 pertaining to elections)	

TO: All Concerned Persons

1. On June 20, 2013, the Secretary of State published MAR Notice No. 44-2-181 pertaining to the public hearing on the proposed adoption, amendment, amendment and transfer, and transfer of the above-stated rules at page 1059 of the 2013 Montana Administrative Register, Issue Number 12.

2. The Secretary of State has amended, amended and transferred, and transferred the following rules as proposed: ARM 44.3.1101, 44.3.2004, 44.3.2005, 44.3.2014, 44.3.2015, 44.3.2110, 44.3.2111, 44.3.2114, 44.3.2203, 44.3.2304, 44.3.1403, 44.3.1716, 44.3.2016, and 44.3.1715.

3. The Secretary of State has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE I (44.3.2407) BALLOT FORM AND UNIFORMITY

(1) ~~Guidelines that prescribe the ballot form for each type of ballot used in this state are provided to each election administrator in the prescribed forms and election judge handbook, as applicable.~~ The secretary of state adopts and incorporates by reference the document entitled "Ballot Form and Uniformity Pursuant to 13-12-202 MCA Layout Instructions and Sample Ballots," which is available on the secretary of state's web site at the following link: <http://sos.mt.gov/Elections/Officials/Forms/index.asp>, updated March 20, 2012.

(2) The document incorporated by reference is provided to each election administrator and contains guidelines that prescribe the ballot form for each type of ballot used in this state, giving guidelines as to font, spacing, and printed instructions, to conform to the requirements of 13-12-202, MCA.

AUTH: 13-1-202, 13-12-202, MCA

IMP: 13-1-202, 13-12-202, MCA

4. The Secretary of State received a comment on proposed New Rule I from K. Virginia "Ginger" Aldrich, Attorney for the Montana State Legislature. She

presented her comments to proposed New Rule I to the State Administration and Veterans' Affairs Committee at a meeting held on July 11, 2013, which resulted in a vote by the committee to object to the adoption of the new rule. Her comments and the Secretary of State's responses are as follows:

COMMENT #1: "New Rule I. The first rule adopts ballot guidelines by reference to 'prescribed forms' and the election judge handbook. The only instance MAPA seems to allow documents incorporated by reference is under 2-4-307, which allows a model code, federal agency rule, rule of another agency of Montana, or 'similar publication' to be adopted by reference. If the Secretary's office contends that they are 'similar publications,' 2-4-307 requires that the documents be in existence at the time of the proposed rulemaking, there be a citation to the material adopted by reference, a statement of where the omitted material may be obtained, and must be available to the public at the time of comment, and cannot be modified without a separate rule-making process. So, it appears that if the SoS considers this a 'similar publication' and wishes to adopt these guidelines, the rule needs some clarification. If the SoS does not consider them to be a 'similar publication,' then the text needs to go through the full rule-making process."

RESPONSE #1: The Secretary of State is adopting New Rule I to put in place a rule required by statute. See 13-12-202, MCA. The guidelines concerning ballot uniformity are contained in the prescribed election forms which are available on the Secretary of State's web site. The Secretary of State is authorized per 13-1-202, MCA, to prescribe forms and written directives and instructions in carrying out her responsibilities as the State's Chief Election Officer. Therefore, the Secretary of State believes the requirements of 2-4-307, MCA, do not apply because the prescribed forms and written directives and instructions are separately authorized by statute and fall under her legal authority to prescribe forms and provide direction and advice to the county election administrators. The Statement of Intent that accompanied Senate Bill 65 (Ch. 471, L. 1979) provided in part that "the (Secretary of State's) authority ... to issue written directions and instructions is intended to give legal standing to the type of directives and instructions the Secretary of State has issued in the past in regard to elections The main purpose of a directive or instruction should be to assist election administrators in their duties and assure uniform procedures are used in all counties whenever possible." However, the Secretary of State has revised the proposed rule to add a reference to where the prescribed forms and directives and instructions can be located on the Secretary of State's web site. The State Administration and Veterans' Affairs Committee voted to withdraw its objection to the proposed New Rule I at its meeting held on August 20, 2013, based on the Secretary of State's proposed amendments.

COMMENT #2: Ms. Aldrich's comments regarding the amendments to 44.3.2005 are as follows: "44.3.2005 The language in (4) is confusing because the 'pending—incomplete' status is not a status under the Code, but (3) appears to be dealing with Provisional voters. I would recommend combining (3) and (4) for clarity."

RESPONSE #2: The Secretary of State has elected not to combine (3) and (4) because (3) is referring to "provisionally *registered*" electors, not provisional voters, and (4) is referring to applicants who do not provide all required information, with the exception of the ID number. The reference to "pending - incomplete" is existing rule language which is not proposed to be amended in this rule notice.

COMMENT #3: Ms. Aldrich's comments regarding the amendment of ARM 44.3.2114 are as follows: "44.3.2114 The catchline may need to be updated. The statute now discusses the 6th day after the election, but it is no longer in the rule."

RESPONSE #3: The Secretary of State will retain the reference to "the sixth day" in the rule catchphrase. The reference to "the sixth day" is eliminated in the text of the rule because that rule text unnecessarily duplicated the statutory language of 13-15-107, MCA.

COMMENT #4: Ms. Aldrich's overall comments are as follows: "Overall Another notice from your office had very helpful explanations – this notice for 44-2-181 seemed to be conforming language with a few bills that passed during the session but it didn't list them in the reasonable necessity statements. It would be helpful to list these in the reasoning rather than broadly saying that the amendments are necessary to conform terminology to statutory language."

RESPONSE #4: This rule notice is both a general cleanup of election rules in that it is meant to address rules that were missed in a general cleanup of election rules in 2011 and 2012 combined with the amendments made to election law by the 2013 Legislature by House Bill 120, which was a general cleanup of election laws.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated the 26th day of August, 2013.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 44.14.304 through 44.14.307)
and 44.14.309 pertaining to fees)
charged by Records and Information)
Management)

TO: All Concerned Persons

1. On July 25, 2013, the Secretary of State published MAR Notice No. 44-2-190 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1327 of the 2013 Montana Administrative Register, Issue Number 14.
2. The Secretary of State has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ JORGE QUINTANA
Jorge Quintana
Rule Reviewer

/s/ LINDA MCCULLOCH
Linda McCulloch
Secretary of State

Dated this 26th day of August, 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 March 31, 2013. This table includes those rules adopted during the period April 1, 2013, through June 30, 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 March 31, 2013, 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 2013 Montana Administrative Register.

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