

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 7

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 BOARD OF COUNTY PRINTING
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 2.67.303 pertaining to maximum) PROPOSED AMENDMENT
pricing and printing standards)

TO: All Concerned Persons

1. On April 30, 2014, at 9:00 a.m., the Board of County Printing will hold a public hearing in Room 105 of the Old Livestock Building, 1310 East Lockey Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Board of County Printing 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 contact the board no later than 5:00 p.m. on April 23, 2014, to advise us of the nature of the accommodation that you need. Please contact Angie Gifford, Department of Administration, 1310 East Lockey Avenue, P.O. Box 200110, Helena, MT 59620-1101; telephone (406) 444-0115; fax (406) 444-3039; or e-mail agifford@mt.gov.

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

2.67.303 OFFICIAL MAXIMUM PRICES AND PRINTING STANDARDS

(1) Rates for county legal advertising ~~shall~~ may not be more than ~~\$14~~ \$12 for the first folio insertion and not more than ~~\$9~~ \$10 for each subsequent insertion.

(2) remains the same.

~~(a) 12 lines of solid six-point type;~~

(b) through (f) remain the same, but are renumbered (a) through (e).

(3) Folios other than rule and figure work ~~shall~~ must consist of 100 words when set in a standard newspaper column width of approximately two inches.

(4) Commissioners' claims and proceedings ~~shall~~ must be charged at the regular folio measurement unless content requires rule and figure work ~~requiring two or more sets of figures in the same line.~~

(5) The following point system measurements ~~shall~~ must be used. For computing 72 points to a linear column inch, there shall be:

~~(a) 12 lines of solid six-point type;~~

(b) through (e) remain the same, but are renumbered (a) through (d).

AUTH: 18-7-404, MCA

IMP: 18-7-411, MCA

STATEMENT OF REASONABLE NECESSITY: The board finds it necessary to propose increases to the current rates for county legal advertising. In the six

years since the rates were last raised, the Montana newspaper industry has experienced significant increases in production-related costs for newsprint and postage. References to six-point type in (2)(a) and (5)(a) are proposed for deletion because eight-point type increases the readability of public notices. Anything less than eight-point type makes it difficult to read for the aging demographic of the print edition. In addition, the amendments to (1), (4), and (5) are necessary to remove archaic language and conform to drafting convention.

The rate increases will affect all Montana counties. There is no reasonable way to estimate the fiscal impact on counties because the number of advertisements a county places varies in any year.

The board proposes making the rate increases effective July 1, 2014, to coincide with the date newspapers are required to submit a sworn statement of circulation with the county clerk and recorder.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Angie Gifford, Department of Administration, 1310 East Lockey Avenue, P.O. Box 200110, Helena, MT 59620-1101; telephone (406) 444-0115; fax (406) 444-3039; or e-mail agifford@mt.gov, and must be received no later than 5:00 p.m. on May 8, 2014.

5. Angie Gifford, staff person for the board, has been designated to preside over and conduct this hearing.

6. The Board of County Printing maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or may be made by completing a request form at any rules hearing held by the board.

7. An electronic copy of this proposal notice is available through the Board of County Printing's web site at <http://countyprinting.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the board 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 2-4-111, MCA, the board has determined that the proposed rule amendments will not significantly and directly impact small businesses.

By: /s/ Milton Wester
Milton Wester, Chair
Board of County Printing

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

Certified to the Secretary of State March 31, 2014.

BEFORE THE ALTERNATIVE HEALTH CARE BOARD
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.111.511 naturopathic) PROPOSED AMENDMENT AND
physician formulary and the adoption) ADOPTION
of NEW RULE I military training or)
experience)

TO: All Concerned Persons

1. On May 1, 2014, at 1:00 p.m., a public hearing will be held in the Basement Conference Room, room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Alternative Health Care Board (board) no later than 5:00 p.m., on April 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdahc@mt.gov.

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

24.111.511 NATUROPATHIC PHYSICIAN NATURAL SUBSTANCE FORMULARY LIST (1) through (3)(a)(v) remain the same.

(vi) metronidazole;

(vi) and (vii) remain the same, but are renumbered (vii) and (viii).

(b) through (10)(d) remain the same.

(e) insulin;

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

~~(h)~~ (i) thyroglobulin USP;

(11) through (13)(c) remain the same.

(d) botox cosmetic;

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

(h) juvederm;

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

(j) metformin;

(h) through (l) remain the same, but are renumbered (k) through (o).

(14) through (17) remain the same.

AUTH: 37-1-131, 37-26-201, MCA
IMP: 37-26-301, MCA

REASON: Naturopathic physicians have authority under 37-26-301, MCA, to prescribe natural substances, including pharmaceuticals derived from natural substances in treating their patients. The nonexclusive list of examples that may be prescribed by naturopaths is set forth in the formulary rule at ARM 24.111.511, and is a resource for pharmacists and to facilitate patients' ability to fill prescriptions written by naturopathic physicians. Following a recommendation by the formulary committee established in 37-26-301, MCA, the board determined it is reasonably necessary to amend this rule by adding five drugs that each have a natural basis and are effective treatments.

The board is amending (3) to add metronidazole, which is a nitroimidazole with antiparasitic and antimicrobial properties. The first nitroimidazole (azomycin) was isolated from a streptomycete bacteria, thereby making metronidazole a synthetic derivative of a natural substance. Metronidazole is used to treat parasitic infections such as giardia.

The board is amending (10) to add insulin, a hormone that is naturally produced by the body to regulate blood glucose, and (13)(j) to add metformin, an antidiabetic agent that affects insulin-resistance and lowers blood glucose in patients. Metformin originated from French lily or goats' rue. It is reasonably necessary to add insulin and metformin to the formulary rule to clarify that naturopathic physicians may prescribe insulin and metformin as necessary to treat diabetic conditions.

The board is adding botox cosmetic at (13)(d), which is an injectable agent derived from naturally occurring botulinum toxin that is produced by the bacterium *Clostridium botulinum*. The botulinum toxin blocks nerve activity in the muscles causing a temporary reduction in muscle activity. Juvederm is being added as (13)(h) and is an injectable facial filler derived from hyaluronic acid that is naturally produced by the body and found in the skin and muscles. Hyaluronic acid maintains skin volume and hydration.

The proposed additions to the formulary are routinely covered in both the naturopaths' medical education and continuing education programs as agents for use in clinical practice. Additionally, these are effective drugs to treat common human maladies. It is reasonably necessary to add these drugs to the formulary list to clarify that naturopathic physicians may prescribe these drugs and to facilitate the ability of their patients to fill prescriptions written by naturopathic physicians.

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as direct-entry midwives and naturopathic physicians.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

(a) United States Armed Forces;

- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements for direct-entry midwives and naturopathic physicians. At a minimum, satisfactory evidence shall include:

(a) a copy of the applicant's military discharge document (DD 214);

(b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and

(c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdahc@mt.gov, and must be received no later than 5:00 p.m., May 9, 2014.

6. An electronic copy of this notice of public hearing is available at www.althealth.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.111.511 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Alternative Health Care Board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or e-mail dlibsdahc@mt.gov.

10. Jennifer Massman, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ALTERNATIVE HEALTH CARE
MARY ANN BROWN, DEM, CHAIRPERSON

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

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

Certified to the Secretary of State March 31, 2014

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

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I military training or experience) PROPOSED ADOPTION

TO: All Concerned Persons

1. On May 1, 2014, at 1:30 p.m., a public hearing will be held in the Basement Conference Room, room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Nursing (board) no later than 5:00 p.m., on April 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Cynthia Gustafson, Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail nurse@mt.gov.

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a registered nurse (RN), licensed practical nurse (LPN), advanced practice registered nurse (APRN), and medication aide (MA) I and II.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements of a registered nurse (RN), licensed practical nurse (LPN), advanced practice registered nurse (APRN), and medication aide (MA) I and II. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA
IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

4. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to nurse@mt.gov, and must be received no later than 5:00 p.m., May 9, 2014.

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

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking

proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to nurse@mt.gov; or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

8. With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Nursing, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2380; facsimile (406) 841-2305; or e-mail to nurse@mt.gov.

9. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

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 March 31, 2014

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

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 24.189.401 fee schedule,	)	PROPOSED AMENDMENT AND
24.189.601 application procedures,	)	ADOPTION
24.189.604 minimum standards,)	
24.189.607 required supervised)	
experience, 24.189.620 licensees)	
from other states or Canadian)	
jurisdictions, 24.189.630 licensure as)	
a psychologist by experience,)	
24.189.633 temporary permit,)	
24.189.2101 continuing education,)	
24.189.2104 continuing education)	
program options, 24.189.2107)	
continuing education implementation,)	
and the adoption of NEW RULE I)	
exemptions and NEW RULE II)	
military training or experience)	

TO: All Concerned Persons

1. On May 1, 2014, at 2:00 p.m., a public hearing will be held in the Basement Conference Room, room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Psychologists (board) no later than 5:00 p.m., on April 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Cheryl Brandt, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibspsy@mt.gov.

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

- 24.189.401 FEE SCHEDULE (1) and (1)(a) remain the same.
- (b) Active license renewal fee ~~400~~ 600
- (c) through (2) remain the same.

AUTH: 37-1-134, 37-17-202, MCA

IMP: 37-1-134, 37-1-141, 37-17-302, MCA

REASON: The board determined it is reasonably necessary to increase the active license renewal fee to comply with the provisions of 37-1-134, MCA, and keep the board's fees commensurate with associated costs, including personal services, the litigation of significant legal cases, and updating computer software necessary to do the board's work. In providing administrative services to the board, the department has concluded that unless the renewal fee is increased as proposed, the board will have a shortage of operating funds by the 2014 licensure renewal period. The board estimates that the amendment will affect approximately 235 renewing psychologists and will result in an estimated increase of \$47,000 in annual revenue.

24.189.601 APPLICATION PROCEDURES (1) through (1)(d) remain the same.

(e) An applicant applying under 37-17-302(3)(c), MCA, shall submit an application to the board office. The board office will notify the applicant when the application is complete for purposes of review by the Association of State and Provincial Psychology Boards, and the applicant must then submit the curriculum review fee, which is set by the Association of State and Provincial Psychology Boards, directly to the Association of State and Provincial Psychology Boards. When the Association of State and Provincial Psychology Boards recommendation is received in the board office, the application will be scheduled for board review.

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

(e) a copy of a self-query of the National Practitioner Data Bank; and

(f) completed reference forms from a minimum of five references attesting to the applicant's good moral character; and

(g) if applicable, the Association of State and Provincial Psychology Boards recommendation as to whether the applicant's course of studies meets minimum standards specified in ARM 24.189.604.

(3) through (6) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-17-302, MCA

REASON: The board has faced a number of challenges to the board's interpretation of its own minimum standards when evaluating psychology programs that are not clinical psychology programs approved by the American Psychological Association. The challenges are expensive to the board, and to applicants and licensees, as well. The board concluded that it is reasonably necessary to amend this rule and ARM 24.189.604 to increase the time and cost efficiency of the application process and introduce additional assurances of objectivity, which will hopefully discourage litigation of future board decisions in this area.

24.189.604 MINIMUM STANDARDS (1) If the applicant is applying based on 37-17-302(3)(c), MCA, the applicant's course of studies must meet the minimum standards specified in this rule. The course of studies must be evaluated by the Association of State and Provincial Psychology Boards. The board shall consider,

but is not bound by, the recommendation of the Association of State and Provincial Psychology Boards when determining whether the course of studies meets minimum standards.

(1) remains the same but is renumbered (2).

AUTH: 37-1-131, 37-17-202, 37-17-302, MCA

IMP: 37-17-302, MCA

REASON: See reason for ARM 24.189.601.

24.189.607 REQUIRED SUPERVISED EXPERIENCE (1) through (1)(c) remain the same.

(i) administering and interpreting psychological tests and providing clients or patients assistance in solving their professional or personal problems for a total of no less than 25 percent of one year (a minimum of 400 hours);

~~(ii) providing clients or patients assistance in solving their professional or personal problems~~ supervising graduate-level practicum for a total of no more than 25 percent of one year (a maximum of 400 hours); and

(iii) designing original research projects, analyzing and reporting research data, and teaching one or more courses in psychology for a total of no more than 50 percent of one year (a maximum of 800 hours) ;

~~(iv) analyzing and reporting research data; and~~

~~(v) teaching a course in psychology.~~

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

(c) involve the supervisee providing direct clinical services to clients at least ~~50~~ 25 percent of the time; and

(d) through (13) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-17-302, MCA

REASON: The board has been requested to reconsider the types of supervised experience and the amount of the various types of experience that individuals are allowed to use toward licensure. The board acknowledges that supervised experience opportunities for those involved in academia or research after receiving their doctoral degrees are limited, and that limitation may be a disincentive for individuals to pursue academic and research-related activities. The board further agrees that this effect will not benefit the profession, professionals, or the public. The board is amending this rule in response to those concerns and as reasonably necessary to accommodate those whose careers begin with an emphasis on academia and research.

24.189.620 LICENSEES FROM OTHER STATES OR CANADIAN JURISDICTIONS (1) through (2)(b)(ii) remain the same.

(c) either:

~~(i) is currently credentialed as a health service provider in psychology by the National Register of Health Service Providers in Psychology; or~~

(ii) holds a current certificate of professional qualification (CPQ) in psychology issued by the Association of State and Provincial Psychology Boards (ASPPB).

(3) remains the same.

(4) Applicants shall submit completed and ~~notarized~~ applications, on forms prescribed by the ~~board~~ department, including all required fees and documentation.

(5) remains the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-304, 37-17-304, MCA

REASON: The board determined it is reasonably necessary to amend this rule to no longer accept credentialing from the National Register of Health Service Providers in Psychology when determining substantial equivalency to Montana standards. The board has received applications from applicants with this credential, and discovered that the credentialing organizations approved academic degrees from psychology programs not meeting the requirements of the board's minimum standards rule, ARM 24.189.604. The board has determined that only a current certificate of professional qualification (CPQ) in psychology issued by the Association of State and Provincial Psychology Boards (ASPPB) will reliably establish substantial equivalency under ARM 24.189.620(1) and meet the requirements of ARM 24.189.604. The board is also amending (4) to facilitate the standardization of application forms and licensure processes within the department.

24.189.630 LICENSURE AS A PSYCHOLOGIST BY EXPERIENCE

(SENIOR) (1) and (1)(a) remain the same.

(b) submits verification of current licensure as a psychologist and at least 20 years of licensure as a psychologist in a United States or Canadian jurisdiction(s). Official ~~written~~ verification of such licensure status must be received by the board directly from the other state(s) or jurisdiction(s);

(c) provides documentation of at least ten years of clinical experience in the last 15 years prior to filing the application. This verification shall be on forms prescribed by the ~~board~~ department, including specific dates, and shall consist of an employer's statement; or verification by two licensed psychologists (if in private practice); or a combination of both;

(d) ~~pays any fees required by another jurisdiction(s) to provide official written verification that the licensee has never been disciplined, which will be requested by the Montana board directly from the other state(s) or jurisdiction(s) and from the Association of State and Provincial Psychology Boards national psychologist data bank~~ submits verification of applicant's license discipline history from each United States and Canadian jurisdiction where applicant is or was licensed as a psychologist. Official written verification of such license discipline history must be received by the board directly from each of the other state(s) or jurisdiction(s);

(e) submits a complete, ~~notarized~~ application form with the proper fees at least 90 days in advance of the April or October examination dates. Such application will include work samples and reference letters as described in ARM 24.189.601;

(f) remains the same.

AUTH: 37-17-202, MCA

IMP: 37-17-307, 37-17-310, MCA

REASON: The board is amending (1)(d) to simplify and streamline the out-of-state license verification process for those applying by experience. Currently, board staff contacts other licensure states and the national psychologist association to obtain license verification. Sometimes, the other jurisdiction has not yet received the applicant's fees, and board staff must facilitate a process that depends entirely on the applicant's participation and efforts. The board is further amending this rule to facilitate the standardization of application forms and licensure processes within the department.

24.189.633 TEMPORARY PERMIT (1) through (8) remain the same.

(9) A temporary permit is valid until the ~~person either fails~~ date of the first oral examination for which the person is eligible, following issuance of the permit, ~~or is granted a license, whichever occurs first.~~

(10) and (11) remain the same.

AUTH: 37-1-131, 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-305, MCA

REASON: Since the 2012 adoption of this rule, the board discovered an error regarding the duration of a temporary practice permit. The rule provides that a temporary permit is valid from issuance until the applicant either fails the first oral examination for which the person is eligible, or until the applicant is granted a license, whichever occurs first. The language is based upon the premise that the permit holder will take the first oral examination for which the person is eligible. Because an argument could be made that a permit holder who does not take the first oral examination for which the person is eligible would neither have failed nor been granted a license, and could continue to have a temporary practice permit, it is reasonably necessary to amend this rule to clarify the board's intent that temporary permits are valid only to the date of the first eligible oral examination.

24.189.2101 CONTINUING EDUCATION REQUIREMENTS (1) through (3) remain the same.

(a) The activity must have significant intellectual or practical content. The activity must deal primarily with substantive psychological issues, psychological skills or laws or rules and ethical standards related to one's role as a psychologist. In addition, the board may accept continuing education activities from other professional groups or academic disciplines if the psychologist demonstrates that the activity is substantially related to his or her role as a psychologist. ~~The following are examples of activities that typically do not qualify for continuing education credit:~~

~~(i) management of a professional practice;~~

~~(ii) investments;~~

~~(iii) marketing;~~

- ~~(iv) profitability of the practice;~~
 - ~~(v) office organization;~~
 - ~~(vi) management;~~
 - ~~(vii) legislative issues;~~
 - ~~(viii) peer review;~~
 - ~~(ix) general, nonspecific supervision;~~
 - ~~(x) general staffing; and~~
 - ~~(xi) consultation, except if presented in a study group.~~
- (b) and (c) remain the same.
- (i) full name and qualifications of the ~~presenter~~ presenter;
- (ii) through (d) remain the same.

AUTH: 37-1-319, 37-17-202, MCA
IMP: 37-1-306, MCA

REASON: The board determined it is reasonably necessary to amend this rule and strike the list of activities that generally do not qualify as acceptable continuing education. The board concluded that the list is unnecessary and does not meaningfully contribute to public health, safety, and welfare. The board is amending this rule and ARM 24.189.2104 to provide only those restrictions necessary to guide licensees in choosing continuing education that will increase competency and safe practice while remaining flexible to meet licensee needs.

24.189.2104 CONTINUING EDUCATION PROGRAM OPTIONS

(1) Acceptable continuing education may be chosen from ~~(a), (b), (c), or (d)~~ below (a) through (e). No more than ~~20~~ 30 of the total continuing education units required can be met by (b) and up to 15 continuing education units can be met by (c).

(a) Acceptable continuing education includes:

~~(a)~~ (i) Any American Psychological Association-approved continuing education activity or program for psychologists that meets ARM 24.189.2101(3)(a) through (c) ~~above~~ will qualify for continuing education credit.

(ii) Credit may be given for workshops and other educational activities offered at professional conferences and conventions sponsored by the American Psychological Association and its affiliates if the content of such presentations meets the standards established by ARM 24.189.2101(3)(a) through (c) ~~above~~. General business meetings do not qualify.

(iii) Any other specific activities, i.e. audio tapes or conference/workshops, meeting requirements of ARM 24.189.2101(3)(a) through (c) ~~above~~ will qualify for continuing education credit.

(b) ~~(b)~~ (b) No more than 30 continuing education units meeting the following criteria:

(i) Documentation of successful completion of an advanced credential requiring extensive preparation of work samples, research, oral examination, e.g. ABPP, ~~may be submitted in fulfillment of no more than 20 continuing education units.~~

- (ii) Study groups may qualify for continuing education if:
 - (A) through (C) remain the same.

(D) Minutes are kept of each study group meeting and are available to the Board of Psychologists upon request. The minutes shall include the names of the participants present, the subject matter, and references which relate to any written material utilized. Each such group shall designate an individual to serve as the recorder of the minutes. The name of the recorder shall be noted on the continuing education form.

(iii) Formally organized classes, with preassigned credit and attendance verifiable by transcript, offered under the auspices of regionally accredited institutions of higher education that meet criteria specified in ARM 24.189.2101(3)(a) and (b) ~~above~~.

(iv) The following professional activities that meet criteria specified in ARM 24.189.2101(3)(a) and (b) ~~above~~ may be submitted in fulfillment of no more than ~~ten~~ 30 continuing education units:

(A) through (E) remain the same.

(c) No more than 15 continuing education units of personal growth activities that meet the following criteria:

(i) individual psychotherapy that:

(A) remains the same.

(B) is conducted by a certified or licensed professional.

(C) through (iii)(D) remain the same.

(d) No more than ten continuing education units may be granted for courses relative to the management of a professional practice.

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

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-306, 37-17-202, MCA

REASON: The board determined it is reasonably necessary to amend the allowable continuing education units within different categories to better reflect what the board believes is the the proper balance necessary for continued practitioner competence.

24.189.2107 CONTINUING EDUCATION IMPLEMENTATION (1) through (2)(c) remain the same.

(d) All licensed psychologists must ~~either~~ submit attestation to the board on the appropriate year's license renewal that they have obtained the required continuing education ~~or submit a plan to complete the continuing education credits.~~ The board may randomly audit up to 50 percent of the licensees attesting to continuing education. Certificates of completion or programs for continuing education credits reported must be submitted upon request of the board. The board will review these renewals and, if appropriate, notify the licensee regarding his/her noncompliance. Prior to the next consecutive year's license renewal, those licensees who have not complied with continuing education requirements will be referred to the board screening panel for possible disciplinary action. Those not receiving notice from the board regarding their continuing education should assume satisfactory compliance. Notices of continuing education audit will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing

education plan requirements for licensure can be used to meet the continuing education requirements for the next continuing education reporting period. Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.

(e) remains the same.

~~(f) The board will randomly audit 25 percent of the licensees attesting to continuing education in addition to all licensees requiring a plan. Certificates of completion or programs for continuing education credits reported must be submitted upon request of the board. Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.~~

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-131, 37-1-141, 37-1-306, 37-17-202, MCA

REASON: The board is required to raise renewal fees in ARM 24.189.401 to meet its statutory obligation to set and maintain fees commensurate with associated costs of board functions. The board is always trying to reduce costs, as well. Noting a significant cost associated with annually auditing 25 percent of licensees to enforce CE compliance, the board is amending this rule to remove the mandatory audit of a particular number of licensees and to further reduce board costs.

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

NEW RULE I EXEMPTIONS (1) To be exempt from licensure under 37-17-104(1)(b), MCA, "within the confines of the agency or institution" means that the person is providing activities and services limited to the purposes and used only within the confines of the organization. For example, a person may not perform activities and services that, at the time they are performed, include evaluations, assessments, or other activities and services that would produce a report or other record that is intended or anticipated to be admitted into a court proceeding to determine the person's competency or fitness in relation to the person's rights or privileges outside the organization.

(2) For the limited services described in 37-17-104(1)(d), MCA, to be exempt as "consulting" services, including but not limited to services provided via electronic means on behalf of clients located within the state of Montana, the person claiming the exemption must not be a resident of Montana, must be licensed to provide the services in another state or Canadian province, and provide all such activities and services either:

(a) in association with, at the direction of, or upon the recommendation of a licensed Montana psychologist who bears primary responsibility for those activities and services; or

(b) in fulfilling a strictly forensic role as an expert witness and not as a treating psychologist.

(3) To be exempt under 37-17-104(1)(e), MCA, one must have submitted a completed application to the board within 12 months of becoming a Montana resident. Whether someone is a resident of Montana is a question determined by considering all relevant facts, including but not limited to the location of the person's

primary domicile, whether the person has a Montana driver's license, and whether the person is registered to vote or has voted in Montana.

(4) "Qualified" members of other professions under 37-17-104(1)(a) and (2), MCA, for purposes of administering tests and making evaluations or assessments means only those individuals who are licensed by:

(a) the Board of Medical Examiners or the Board of Nursing and whose scope of practice specific to their license includes the administering of psychological tests and the making of evaluations or assessments; or

(b) the Board of Social Work Examiners and Professional Counselors as Licensed Clinical Social Workers and Licensed Clinical Professional Counselors and who meet the qualifications set by that board in compliance with 37-17-104, MCA.

AUTH: 37-1-131, MCA
IMP: 37-17-104, MCA

REASON: The board is frequently asked to determine, based on a given set of facts, whether certain conduct is the practice of psychology, which is generally proscribed in the absence of a license, or if the conduct is permissible under one or more of the exemptions in 37-17-104, MCA. Such requests are time-sensitive and waiting for a board meeting may be inconvenient or even a hardship for the requester. The board determined it is reasonably necessary to adopt this new rule to provide additional guidance as to the board's intention regarding the statutory exemptions, and address the lack of specificity in a statute that excuses certain individuals from licensure under limited circumstances.

The exemption provided in 37-1-104(1)(c), MCA, is a commonly occurring exemption that applies only to those who have applied for Montana licensure, thus the conduct of license applicants is specifically regulated by the board. The application of the remainder of the exemptions is relevant to licensees whose conduct may be subject to discipline based on aiding or abetting the unlicensed practice of psychology, a prohibited act under 37-1-316, MCA. In determining whether certain conduct is prohibited as unlicensed, the board must, at times, determine whether that conduct is exempt from licensure under 37-17-104, MCA. The board must also determine whether certain conduct is exempt from licensure under 37-17-104, MCA, before deciding whether to seek to enjoin such conduct per 37-1-136, MCA.

NEW RULE II MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a psychologist.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a psychologist. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule II to coincide with and further implement the legislation.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibspsy@mt.gov, and must be received no later than 5:00 p.m., May 9, 2014.

6. An electronic copy of this notice of public hearing is available at www.psy.mt.gov (department and board's web site). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical

problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.401 will significantly and directly impact small businesses and prepared a small business impact analysis regarding this amendment. The group of small businesses likely affected are independently owned and operated psychologist businesses with fewer than 50 full-time employees, and that renew psychologist licensee-employees. The probable significant direct effect is a capital impact on each licensee of the affected small businesses in the amount of \$200 per year for license renewal. The board has no alternative methods through which to increase board revenue other than raising licensure fees.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.601, 24.189.604, 24.189.607, 24.189.620, 24.189.630, 24.189.633, 24.189.2101, 24.189.2104, and 24.189.2107, will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rules I and II will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2394; facsimile (406) 841-2305; or e-mail dlibspsy@mt.gov.

10. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PSYCHOLOGISTS
GEORGE WATSON, PH.D, CHAIRPERSON

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

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

Certified to the Secretary of State March 31, 2014

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

In the matter of the amendment of)
ARM 24.210.825 renewals and the)
adoption of NEW RULE I military)
training or experience)
NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On May 1, 2014, at 12:30 p.m., a public hearing will be held in the Basement Conference Room, room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on April 24, 2014, to advise us of the nature of the accommodation that you need. Please contact Marilyn Willson, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdrre@mt.gov.

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

24.210.825 RENEWALS (1) Except for new licensees as provided in ARM ~~24.210.827~~ 24.210.829, all active and inactive licensees will be required to renew as set by ARM 24.101.413.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-1-141, 37-51-203, MCA

IMP: 37-1-101, 37-1-141, 37-51-601, MCA

REASON: It is reasonably necessary to amend this rule to correct a typographical error that department staff discovered. In 2007, the board added (1) to this rule in MAR Notice No. 24-210-29, which included a reference to proposed New Rule II. When ARM 24.210.829 was assigned to New Rule II, it was incorrectly cross referenced in this rule as ARM 24.210.827.

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

NEW RULE I MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education

toward the requirements for licensure as a real estate broker, real estate salesperson, or property manager.

(2) Relevant military training, service, or education must be completed by an applicant while a member of either:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a real estate broker, real estate salesperson, or property manager. At a minimum, satisfactory evidence shall include:

- (a) a copy of the applicant's military discharge document (DD 214);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, MCA

IMP: 37-1-145, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The bill was signed by the Governor and became effective on April 26, 2013, and is codified at 37-1-145, MCA.

The new statute requires each licensing board and program to adopt rules providing that certification or licensure requirements of the board or program may be met by relevant military training, service, or education, completed as a member of the armed forces or reserves of the United States, a state's national guard, or the military reserves. In consulting with the bill sponsors regarding the rulemaking, it was clarified that the sponsor received input on the bill draft from Montana military personnel and the U.S. Department of Defense. The sponsor was assured that the bill language, as reflected in this proposed rule, is intended to include relevant military training, service, or education received while serving in all branches of the military and reserves, including the U.S. Coast Guard. It is reasonably necessary for the board to adopt New Rule I to coincide with and further implement the legislation.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., May 9, 2014.

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

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

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted on December 16, 2013, by electronic mail.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.210.825 will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of New Rule I will not significantly and directly impact small businesses.

Documentation of the board's above-stated determination is available upon request to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2320; facsimile (406) 841-2305; or e-mail dlibsdrre@mt.gov.

10. Gene Allison, attorney, has been designated to preside over and conduct this hearing.

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 March 31, 2014

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.6.712 pertaining to food	)	AMENDMENT
safety and inspection service (meat)	
and poultry)	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On June 2, 2014, the Department of Livestock proposes to amend the above-stated rule.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on April 30, 2014, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.6.712 FOOD SAFETY AND INSPECTION SERVICE (MEAT, POULTRY)

(1) The Department of Livestock hereby incorporates by reference the following as they were effective ~~July 25, 1996~~ March 18, 2014:

- (a) 9 CFR ~~304~~ 300.1 through 9 CFR ~~320.7~~ 321.3;
- (b) through (d) remain the same.
- (e) 9 CFR ~~384~~ 381.1 through 9 CFR ~~381.37~~ 381.103;
- (f) ~~9 CFR 381.45 through 9 CFR 381.95~~;
- (g) through (i) remain the same but are renumbered (f) through (h).
- (j) 9 CFR 381.210 through 9 CFR 381.218;
- (k) 9 CFR ~~416~~; 416.1 through 9 CFR ~~441.10~~; and
- (l) 9 CFR ~~417~~; 500.1 through 9 CFR 500.8.
- ~~(m) 9 CFR 424; and~~
- ~~(n) 9 CFR 500.~~

~~(2) The Department of Livestock incorporates by reference the following as they were effective January 9 and June 6, 2003:~~

- ~~(a) 9 CFR 430.1;~~
- ~~(b) 9 CFR 430.4; and~~
- ~~(t) 9 CFR 441.10.~~

~~(3) The Department of Livestock incorporates by reference the following as they were amended effective April 17, 2009:~~

~~(a) 9 CFR 309;~~

~~(b) 9 CFR 310;~~

~~(c) 9 CFR 318.~~

~~(4) The Department of Livestock incorporates by reference the following as they were added effective May 1, 2008:~~

~~(a) 9 CFR 381.210 through 381.218.~~

~~(5) The Department of Livestock incorporates by reference the following as they were amended effective September 8, 2010.~~

~~(a) 9 CFR 422.~~

~~(6) remains the same but is renumbered (2).~~

~~(a) through (r) remain the same.~~

~~(s) Any reference to "Compliance Staff, Meat and Poultry Inspection Field Operations, Food Safety and Inspection Service, U.S.D.A., Washington, D.C. 20250" will mean "Chief Inspector in Charge, Meat and Poultry Inspection Program, Montana Department of Livestock, Capitol Station P.O. Box 202001, Helena, Montana 59620-2001."~~

~~(t) through (ai) remain the same.~~

~~(7) (3) CFR's are The Code of Federal Regulations is available for review at the Montana State Law Library, 215 North Sanders in Helena or online at www.access.gpo.gov/hara/cfr/index.html www.ecfr.gov.~~

AUTH: 81-2-102, 81-9-220, MCA

IMP: 81-2-102, 81-9-217, 81-9-220, MCA

REASON: The department is amending the above-stated rule to bring it up to date with current federal regulations effective as of March 18, 2014. No fees have been added or changed.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov and must be received no later than 5:00 p.m., May 12, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, and arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as above. The written request for hearing must be received no later than 5:00 p.m., May 12, 2014.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those persons

directly affected has been determined to be more than 25, based upon the population of the state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Robert Stutz
Robert Stutz
Rule Reviewer

Certified to the Secretary of State March 31, 2014

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.18.102, 32.18.103, and	)	AMENDMENT AND REPEAL
32.18.104, and the repeal of ARM)	
32.18.203 and 32.18.402 pertaining	)	NO PUBLIC HEARING
to age tally marks, numeral marks,	)	CONTEMPLATED
placement of digits, import)	
transportation permits, and hides to)	
be marked)	

TO: All Concerned Persons

1. On May 12, 2014, the Department of Livestock proposes to amend and repeal the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on April 30, 2014, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.18.102 AGE TALLY MARK (1) Single letter identification marks on cattle using numbers 0 to 9 inclusive may be used for an "age tally mark," ~~and must be placed on the same side as the recorded brand used for ownership.~~

(2) The "age tally mark" ~~can only be used when the owner's recorded brand is on the animal(s). The use of this mark is not mandatory~~ may be used on livestock in a manner that does not confuse ownership.

(a) If ownership becomes an issue, the department will follow 81-3-204, MCA, and attempt to determine ownership.

AUTH: 81-1-102, MCA
IMP: 81-1-102, MCA

32.18.103 NUMERAL MARK (1) A "numeral mark" (limited four digits) may be used ~~on the same side as the owner's recorded brand on cattle for individual identification. This mark may be used in addition to the "age tally mark" permitted in ARM 32.18.102~~ on livestock in a manner that does not confuse ownership.

(a) If ownership becomes an issue, the department will follow 81-3-204, MCA, and attempt to determine ownership.

~~(2) The "numeral mark" can only be used when the owner's recorded brand is on the animal(s). The use of this mark is not mandatory.~~

~~(3) When the "numeral mark" is used on cattle for individual identification a single letter may be used in conjunction therewith for the "age tally mark" for each year.~~

AUTH: 81-1-102, MCA
IMP: 81-1-102, MCA

32.18.104 PLACEMENT OF DIGITS (1) One of the four digits to be used in identification brands can be placed over the over number or in a sequence of four numbers: may be used on livestock in a manner as to not confuse ownership.

(a) If ownership becomes an issue, the department will attempt to determine ownership and follow 81-3-204, MCA.

~~a. Example:~~

~~9 — 9
to — or 9001 to 9999
1 — 999~~

~~(2) In addition, upon application to the Department of Livestock, Brands Enforcement Division, authorization may be given for the use of five digit number brands or the symbol system.~~

~~(3) Anyone wanting to use a five digit system or the symbol system may write to the Department of Livestock, Brands Enforcement Division, P. O. Box 202001, Helena, Montana 59620-2001, for an individual description of how they are to be used.~~

AUTH: 81-1-102, MCA
IMP: 81-1-102, MCA

4. The department proposes to repeal the following rules:

32.18.203 IMPORT TRANSPORTATION PERMIT which can be found on page 32-701 of the Administrative Rules of Montana.

AUTH: 81-3-202, MCA
IMP: 81-3-214, MCA

32.18.402 HIDES TO BE MARKED which can be found on page 32-713 of the Administrative Rules of Montana.

AUTH: 81-9-112, MCA
IMP: 81-9-112, MCA

REASON: The department is amending the above-stated rules for clarification and to eliminate redundancy. The department is repealing the above-stated rules to conform with the repeal of pertinent statutes. No fees have been added or changed.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov, and must be received no later than 5:00 p.m., May 12, 2014.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments to the same address as above. The written request for hearing must be received no later than 5:00 p.m., May 12, 2014.

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

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

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

DEPARTMENT OF LIVESTOCK

BY: /s/ Christian Mackay
Christian Mackay
Executive Officer
Board of Livestock
Department of Livestock

BY: /s/ Robert Stutz
Robert Stutz
Rule Reviewer

Certified to the Secretary of State March 31, 2014

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION AND
RULES I, II, III, IV, and V pertaining to) AMENDMENT
derivatives transactions and securities)
financing transactions and the)
amendment of ARM 2.59.108 pertaining)
to lending limits)

TO: All Concerned Persons

1. On January 30, 2014, the Department of Administration published MAR Notice No. 2-59-502 pertaining to the proposed adoption and amendment of the above-stated rules at page 142 of the 2014 Montana Administrative Register, Issue Number 2.

2. No comments were received.

3. The department has adopted the following rules exactly as proposed: NEW RULE I (ARM 2.59.125), NEW RULE II (ARM 2.59.126), NEW RULE III (ARM 2.59.127), NEW RULE IV (ARM 2.59.128), and NEW RULE V (ARM 2.59.129).

4. The department has amended ARM 2.59.108 exactly as proposed.

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

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

Certified to the Secretary of State March 31, 2014.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.2.501 pertaining to the)
administration of the 2015 Biennium)
Quality Schools Grant Program –)
Planning Grants)

TO: All Concerned Persons

1. On February 27, 2014, the Department of Commerce published MAR Notice No. 8-2-122 pertaining to the proposed amendment of the above-stated rule at page 345 of the 2014 Montana Administrative Register, Issue Number 4.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State March 31, 2014.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 8.111.602 and 8.111.603)
pertaining to the Low Income Housing)
Tax Credit Program)

TO: All Concerned Persons

1. On February 27, 2014, the Department of Commerce published MAR Notice No. 8-111-121 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 348 of the 2014 Montana Administrative Register, Issue Number 4.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

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

/s/ Douglas Mitchell
DOUGLAS MITCHELL
Deputy Director
Department of Commerce

Certified to the Secretary of State March 31, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to administrative)
requirements for limited opencut) (RECLAMATION)
operations)

TO: All Concerned Persons

1. On December 26, 2013, the Board of Environmental Review published MAR Notice No. 17-351 regarding a notice of proposed adoption, no public hearing contemplated, of the above-stated rule at page 2367, 2013 Montana Administrative Register, Issue Number 24.

2. The board has adopted New Rule I (17.24.226) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

17.24.226 ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) remains as proposed.

(2) The operator must submit a completed limited opencut operation form and the following information to the department prior to commencing the opencut operation:

(a) remains as proposed.

(b) the location, in the a format required by acceptable to the department, of the limited opencut operation site;

(c) through (4) remain as proposed.

3. The following comments were received and appear with the board's responses:

COMMENT NO. 1: The proposed rule in (2)(b) provides that the operator shall describe "the location, in the format required by the department, of the limited opencut operation site," while (2)(d) requires the operator to provide "the location, in a format acceptable to the department, of the operator's nearest limited opencut operation to the proposed limited opencut operation site." The use of the words "required by" in (2)(b) and "acceptable to" in (2)(d) may be confusing.

RESPONSE: The Opencut Program intends to strike the words "required by" and replace them with "acceptable to" in (2)(b) of the proposed rule. Doing so will eliminate the discrepancy in language between (2)(b) and (2)(d) and any confusion that could arise from the use of different terms. The change does not alter the meaning of the rule.

4. No other comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: /s/ Robin Shropshire
ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, March 31, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.30.630 pertaining to temporary water)
quality standards)

NOTICE OF AMENDMENT

(WATER QUALITY)

TO: All Concerned Persons

1. On January 30, 2014, the Board of Environmental Review published MAR Notice No. 17-352 regarding a notice of public hearing on the proposed amendment of the above-stated rule at page 183, 2014 Montana Administrative Register, Issue Number 2.

2. The board has amended the rule exactly as proposed.

3. The following comment was received and appears with the board's response:

COMMENT NO. 1: One comment was received in support of the proposed amendment.

RESPONSE: The board acknowledges the comment.

4. No other comments or testimony were received.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North
JOHN F. NORTH
Rule Reviewer

By: /s/ Robin Shropshire
ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, March 31, 2014.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through III, pertaining to the)
license plate age-based reissuance)
process)

TO: All Concerned Persons

1. On February 27, 2014, the Department of Justice published MAR Notice No. 23-3-239 pertaining to the proposed adoption of the above-stated rules at page 356 of the 2014 Montana Administrative Register, Issue Number 4.

2. The department has adopted the above-stated rules as proposed: New Rule I (23.3.751), II (23.3.752), and III (23.3.753).

3. No comments or testimony were received.

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

/s/ Tim Fox
Tim Fox
Attorney General
Department of Justice

Certified to the Secretary of State March 31, 2014.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) CORRECTED NOTICE OF
1.3.215 concerning informal disposition) AMENDMENT
of contested cases)

TO: All Concerned Persons

1. On May 22, 2008, the Department of Justice published MAR Notice No. 23-20-192 pertaining to the proposed amendment of model rules, including the above-stated rule at page 988 of the 2008 Montana Administrative Register, Issue Number 10. A notice of amendment was certified to the Secretary of State on August 4, 2008, and is located at page 1700 of the 2008 Montana Administrative Register, Issue Number 15.

2. The Department of Justice is submitting this corrected notice because, due to a typographical error, ARM 1.3.215(4) does not reference the correct statute. The rule, as amended in corrected form, reads as follows, deleted matter interlined, new matter underlined:

1.3.215 CONTESTED CASES, INFORMAL DISPOSITION (1) through (3) remain as amended.

(4) A record of proceedings conducted under this part must be made in accordance with 2-4-604 ~~2-6-604~~, MCA.

3. The replacement pages for this corrected notice were submitted to the Secretary of State on March 31, 2014.

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

/s/ Tim Fox
Tim Fox
Attorney General
Department of Justice

Certified to the Secretary of State March 31, 2014.

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through III relating to)
licensure of professional employer)
organizations)

TO: All Concerned Persons

1. On December 26, 2013, the Department of Labor and Industry (department) published MAR Notice No. 24-38-280 regarding the public hearing on the proposed adoption of the above-stated rules, at page 2380 of the 2013 Montana Administrative Register, Issue No. 24.

2. On January 16, 2014, a public hearing was held on the proposed adoption of the above-stated rules in Helena. Several comments were received by the January 24, 2014, deadline.

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

COMMENTS: The department received several comments in support of the proposed new rules regarding licensure of professional employer organizations (PEO). The commenters indicated that the new rules support the statutes well, and help clarify the PEO licensure processes for both department staff and applicants.

RESPONSE: The department appreciates all comments received during the rulemaking process and agrees that the new rules will serve to answer questions on PEO licensure, and better facilitate the licensure process.

4. The department has adopted NEW RULE I (ARM 24.38.101), NEW RULE II (ARM 24.38.105), and NEW RULE III (ARM 24.38.111) exactly as proposed.

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

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

Certified to the Secretary of State March 31, 2014

BEFORE THE BOARD OF REAL ESTATE APPRAISERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF ADOPTION
RULE I pertaining to military training)
or experience)

TO: All Concerned Persons

1. On January 16, 2014, the Board of Real Estate Appraisers (board) published MAR Notice No. 24-207-37 regarding the public hearing on the proposed adoption of the above-stated rule, at page 23 of the 2014 Montana Administrative Register, Issue No. 1.

2. On February 10, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the February 14, 2014, comment deadline.

3. The board has adopted NEW RULE I (ARM 24.207.408) exactly as proposed.

BOARD OF REAL ESTATE APPRAISERS
THOMAS STEVENS, CHAIRPERSON

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

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

Certified to the Secretary of State March 31, 2014

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

IN THE MATTER OF the Petition of) REGULATORY DIVISION
Greycliff Wind Prime, LLC for)
Declaratory Ruling) DOCKET NO. D2014.1.9

DECLARATORY RULING

BACKGROUND

1. On January 21, 2014, Greycliff Wind Prime, LLC (Greycliff) filed a *Petition for Declaratory Ruling* (Petition) with the Montana Public Service Commission (Commission). On February 13, 2014, Greycliff filed an *Amendment to the Petition*.

2. On February 18, 2014, the Commission issued a *Notice of Petition for Declaratory Ruling and Opportunity to Comment*. The Commission received *Comments* from the following entities: Diana's Great Idea, LLC; Engwis Investment Company, Ltd. and R. F. Building Company, LLP; NorthWestern Corporation; and Rock Creek Ranch, Ltd. Greycliff filed *Response Comments* on March 18, 2014.

3. Greycliff is planning construction of a wind project in Sweet Grass County, Montana. In its Petition, Greycliff presents a legal question pertaining to Section 69-3-2003 of the Montana Code Annotated, which defines a "community renewable energy project" (CREP) in part as "an eligible renewable resource . . . in which local owners have a controlling interest." Pet. p. 10 (Jan. 21, 2014).

4. According to Greycliff, a local owner will have "a controlling interest" in its project because the local owner "will manage the project." Response Comments p. 7 (Mar. 18, 2014) ("the organizational documents for Greycliff will empower [the local owner] . . . to control the policy and management of the project."); see also Pet. at pp. 4, 7 (asserting the local owner will be "in control" and have "management control").

5. Although "Greycliff expects to admit a second member which. . . may not be a Montana resident," it asserts that "control of the project [will be] firmly rooted in the Montana community, regardless of the allocation of equity, income, or voting interests at the project level." Response Comments at p. 7. The second member may have as much as a 99% ownership interest in the project. See Amend. Pet. Ex. B (Feb. 13, 2014).

6. According to Greycliff, the rights of the second member "are best described as a 'check' or 'brake' on the management rights of the [local owner]." Pet. pp. 6-7. These rights include "the right . . . to consent to (1) certain major

actions like a sale or refinance of the project, (2) changing major project vendors, or (3) dissolving Greycliff," as well as "a right to remove the [local owner] in the case of wrongful misconduct." *Id.*; Response Comments at p. 2.

7. On December 20, 2011, the Commission certified a project owned by Gordon Butte Wind, LLC as a CREP because Montana residents had "a controlling interest" in the project, albeit indirectly. Or. 7192, Dkt. D2011.11.93, ¶¶ 5-9, 18.

8. On February 25, 2014, the Commission declared that "an eligible renewable resource does not qualify as a CREP unless 'local owners have a controlling interest' at the time of its interconnection and at any point thereafter." Declaratory Rul., Dkt. D2014.1.7, ¶ 8 (Feb. 25, 2014). Under the ownership structure described by Greycliff, the only interest that local owners will control at the time of interconnection will be a management interest in the day-to-day operations of the project.

CONCLUSIONS OF LAW

9. The Commission "shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision. . . ." Mont. Code Ann. § 2-4-501 (2013). "A declaratory ruling or the refusal to issue such a ruling shall be subject to judicial review in the same manner as decisions or orders in contested cases." *Id.*; Admin. R. Mont. 1.3.229(2) (2014).

10. The Commission has adopted the Attorney General's Model Procedural Rules governing declaratory rulings. Admin. R. Mont. 38.2.101. "A party may seek a declaratory ruling from the agency when doubt exists as to how a statute or rule administered by an agency affects the party's legal rights." *Id.* at 1.3.226.

11. A "community renewable energy project" is, in relevant part, "an eligible renewable resource that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity." Mont. Code Ann. § 69-3-2003(4)(a).

12. In order for "business entities" to qualify as "local owners" under the Renewable Power Production and Rural Economic Development Act (Act), "at least 50% of the equity interests, income interests, and voting interests [must be] owned by Montana residents." *Id.* at § 69-3-2003(11)(c)(iii). This language was added to the Act at the request of the Commission, which was concerned that the prior definition was so vague that it allowed CREPs to exist with very little representation by Montanans. Mont. H. Energy & Telecomm. Interim Comm., Hrg. on H. 78, 62d Legis., Reg. Sess. (Mar. 10, 2011). The Commission agrees that "it [was] important to the Montana Legislature . . . to have Montanans own the [projects] seeking certification under the Act, not just receive the benefit of a management salary." Comments of Rock Creek Ranch, Ltd. p. 9 (Mar. 11, 2014). In light of its past

concerns about local ownership, the Commission considers equity, income, and voting interests to be relevant in determining whether "local owners have a controlling interest" in a project.

13. Black's Law Dictionary defines "interest," in relevant part, as "[a] legal share in something; all or part of a legal or equitable claim to or right in property." Black's Law Dictionary 672 (Byran A. Garner ed., 8th ed. 2005). It defines "controlling interest" as "[s]ufficient ownership of stock in a company to control policy and management; esp., a greater-than-50% ownership interest in an enterprise." *Id.* The Commission agrees that "there would have been no reason to insert the word 'interest'" into the definition of CREP if the Legislature had merely intended local owners to have "management control." Comments of Rock Creek Ranch at p. 9; Pet. at p. 7.

14. In dealing with leakage from underground storage tanks, the Montana Department of Environmental Quality defines "controlling interest" as "direct ownership of at least 50% of the voting stock of another entity." Admin. R. Mont. 17.56.803.

15. Under the Montana Business and Industrial Development Corporation Act, "'Hold control' means to directly or indirectly own, of record or beneficially, 50% or more of a business's outstanding voting equity interests." Mont. Code Ann. § 32-11-102.

16. According to Black's Law Dictionary, "control" is "[t]he direct or indirect power to direct the management and policies of a person or entity, whether through ownership of voting securities, by contact, or otherwise," and to have "control" means, in part, "[t]o have a controlling interest in." Black's at pp. 279-280. A number of Montana statutes define "control" in a similar manner. See Mont. Code Ann. §§ 32-11-102 (Business and Industrial Development Corporation Act); 30-14-2501(3) (unfair trade practices by a "motorsports manufacturer"); 39-8-102(3) (Professional Employer Organizations and Groups Licensing Act); 33-19-104(6) (Insurance Information and Privacy Protection Act); 32-9-103(11)(a) (Mortgage Act). Since Greycliff's second member would have the right to consent to major decisions, change project vendors, dissolve Greycliff, and remove the local owner under certain conditions, the Commission is not persuaded that the local owner would have "the power to direct the management or policies" – and thereby "control" the project – by virtue of its limited management interest.

17. The Commission declines to issue the declaratory ruling sought by Greycliff; instead, the Commission declares that under Section 69-3-2003 of the Montana Code Annotated, "local owners have a controlling interest" in a project only if they own, directly or indirectly, more than half of the equity, income and voting interests in the project.

DONE AND DATED this 27th day of March, 2014, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/ W.A. (BILL) GALLAGHER
W.A. (BILL) GALLAGHER
Chairman

/s/ BOB LAKE
BOB LAKE
Vice Chair

/s/ KIRK BUSHMAN
KIRK BUSHMAN
Commissioner

/s/ TRAVIS KAVULLA
TRAVIS KAVULLA
Commissioner

/s/ ROGER KOOPMAN
ROGER KOOPMAN
Commissioner

ATTEST:

Aleisha Solem
Commission Secretary

(SEAL)

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 31st day of March 2014, a true and correct copy of the foregoing has been serviced by placing the same in the United States Mail, postage prepaid, to the service list in the PSC's master file which can be viewed at 1701 Prospect Avenue, Helena, MT 59601:

/s/ Aleisha Solem
PSC Paralegal-Commission Secretary

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee:

- Department of Agriculture;
- Department of Commerce;
- Department of Labor and Industry;
- Department of Livestock;
- Office of the State Auditor and Insurance Commissioner; and
- Office of Economic Development.

Education and Local Government Interim Committee:

- State Board of Education;
- Board of Public Education;
- Board of Regents of Higher Education; and
- Office of Public Instruction.

Children, Families, Health, and Human Services Interim Committee:

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

- Department of Administration;
- Department of Military Affairs; and
- Office of the Secretary of State.

Environmental Quality Council:

- Department of Environmental Quality;
- Department of Fish, Wildlife, and Parks; and
- Department of Natural Resources and Conservation.

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions: **Administrative Rules of Montana (ARM)** is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is a soft back, bound publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding register.

Use of the Administrative Rules of Montana (ARM):

- | | |
|---------------|---|
| Known Subject | 1. Consult ARM Topical Index.
Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued. |
| Statute | 2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers. |

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2013. This table includes those rules adopted during the period January 1, 2014, through March 31, 2014, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 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 2013/2014 Montana Administrative Register.

To aid the user, the Accumulative Table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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