ISSUE NO. 9

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.13.1001A grain fee schedule	))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On June 2, 2014, at 10:00 a.m., the Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, at 302 N. Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Agriculture no later than 5:00 p.m. on May 27, 2014, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov.

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

4.13.1001A GRAIN FEE SCHEDULE (1) The effective date of this rule is July 1, ~~2011~~ 2014.

(2) General provisions applying to all sections of this rule are as follows:

(a) remains the same.

(b) The regular hourly rate for travel time and stand-by fee is ~~$16~~ 24 per hour per individual assessed in half-hour intervals.

(c) Overtime and holiday hourly rate is ~~$23.50~~ 36 per hour per individual assessed in half-hour intervals. A minimum two-hour charge will be assessed except ~~that before or~~ for a continuation of a regular work day, then only actual overtime hours will be charged.

(d) through (j) remain the same.

(k) Processing and handling fee for sample preparation and export documentation (per request)……...$7.50

(3) through (3)(f) remain the same.

~~(g) corn, oil, and/or starch.....$3.00~~

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

(~~k~~j) vomitoxin (DON) per quantitative analysis test.....~~$23.50~~ 30.00

(k) aflatoxin per quantitative analysis test…… $30.00

(l) through (5)(j) remain the same.

(k) vomitoxin (DON) per quantitative analysis test.....~~$23.50~~ 30.00

(l) remains the same.

(m) aflatoxin per quantitative analysis test ……$30.00

(m) and (n) remain the same but are renumbered (n) and o).

AUTH: 80-4-403, 80-4-721, MCA
IMP: 80-4-721, MCA

REASON:
The State Grain Lab (SGL) costs have increased due to increased personnel costs, travel expense, and administrative services. In specific service areas, the cost of providing services has exceeded the revenue. These service areas include travel time, administrative services for export documentation, and mycotoxin determinations. The current hourly rate for services was set in 2003. The SGL has no history of charging for administrative services. The federal agency that provides equivalent services in neighboring states of Idaho and North Dakota does charge for the preparation of export documents and certain other administrative services. The SGL is proposing to add a service for aflatoxin testing on corn, barley, wheat, and other commodities according to Federal Grain Inspection Services guidelines. This service has been requested by our customers.

ECONOMIC IMPACT:
The proposed fee increase will impact three fees currently established: regular hourly rate, overtime/holiday rate, and vomitoxin determination. The SGL charges grain elevator and merchants an hourly rate (regular and overtime) for travel that is associated with official sampling.

The current fee for regular hours is $16.00 and will be increased to $24.00. This fee increase will impact approximately 30 customers resulting in a revenue increase of approximately $16,500.00 annually. The current fee for overtime hours is $23.50 and will be increased to $36.00. This fee increase will impact approximately 30 customers resulting in a revenue increase of approximately $4,000 annually.

The current fee for vomitoxin is $23.50 and will be increased to $30.00. This fee increase will impact approximately 25 customers resulting in a revenue increase of approximately $500.00 annually.

The proposed fee increase would add two new fees: aflatoxin determination and processing/documentation fee for export lots. The proposed fee for aflatoxin would be $30.00. This fee will impact approximately 5 customers resulting in a revenue increase of approximately $600 annually.

The new fee for processing/documentation fee for export lots will be $7.50 per request. A request may include multiple railcars, warehouse lots, etc. This fee will impact approximately 30 customers resulting in a revenue increase of approximately $10,000 annually.

The overall impact of the new and proposed fee increases will result in an increase of revenue of approximately $31,600.

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

submitted to: Cort Jensen, Department of Agriculture, P.O. Box 200201, Helena, Montana, 59620; telephone (406) 444-5402; fax (406) 444-5409; or e-mail cojensen@mt.gov, and must be received no later than 5:00 p.m., June 30, 2014.

5. Cort Jensen, Department of Agriculture, has been designated to preside over and conduct this hearing.

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

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

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

9. 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 as detailed in the economic impact statement.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

/s/ Ron de Yong
Ron de Yong
Director
Department of Agriculture

Certified to the Secretary of State April 28, 2014

BEFORE THE STATE PARKS AND RECREATION BOARD AND
THE FISH AND WILDLIFE COMMISSION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.14.101, 12.14.105, 12.14.110, 12.14.115, 12.14.120, 12.14.125, 12.14.130, 12.14.150, 12.14.155, 12.14.160, and 12.14.165, the adoption of NEW RULE I, and repeal of 12.14.135, 12.14.140, and 12.14.145 pertaining to commercial use rules	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT, ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On June 3, 2014, at 6:00 p.m., the State Parks and Recreation Board (board) and the Fish and Wildlife Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Headquarters, 1420 East 6th Avenue, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The board and commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 23, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

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

12.14.101 DEFINITIONS (1) "Allocation" means distributing limited use opportunities when a rationing system is in place.

(2) "Authorization" means written permission granted to a person or entity by the department to conduct commercial use.

(3) "Board" means the State Parks and Recreation Board of the state of Montana.

~~(3)~~ (4) "Commercial use" means any person or entity that utilizes land under the control, administration, and jurisdiction of the Montana Department of Fish, Wildlife and Parks for consideration. Commercial use includes any person, group, or organization, that makes or attempts to make a profit, vend a service or product, receive money, amortize equipment, or obtain goods or services as compensation from participants in activities occurring on land that is under the control, administration, and jurisdiction of the department. This includes nonprofit organizations and educational groups that receive money from participants in activities occurring on department land. This includes a person whose business

operates on department land, regardless of that person's physical presence at the site, but does not include a person who rents, sells, or otherwise provides equipment or merchandise that is used on department land unless the renting, selling, delivering, or providing of equipment or merchandise takes place on department land. Examples of commercial use that are governed by these rules include but are not limited to: trail rides, guided walks or tours, float trips, guided angling or hunting, game retrieval, professional dog training, equipment rentals, retail sales, food concessions, filming, firewood cutting, construction-related activities, research when accompanied by paying clients, or any combination thereof.

~~(4)~~ (5) "Commission" means the ~~Department of~~ Fish~~,~~ and Wildlife ~~and Parks~~ Commission of the state of Montana.

~~(5)~~ (6) "Concession service" means a commercial business that provides multiple services or products on department land. Examples include but are not limited to marinas, lodging, equipment rental or sales, retail sales, and food services.

~~(6)~~ (7) "Consideration" means something of value given or done in exchange for something of value given or done by another.

~~(7)~~ (8) "Department" means the Department of Fish, Wildlife and Parks of the state of Montana.

(9) "Department land" means all lands under the control, administration, or jurisdiction of the Department of Fish, Wildlife and Parks.

~~(8)~~ (10) "Educational group" means an organized group that is officially recognized as an educational or scientific institution by a federal, state, or local government entity. Documentation of this recognition must be on institutional letterhead and include a signature by the head of the institution/department and documentation of official educational or scientific tax exemption as granted by the Internal Revenue Service.

~~(9) "Fishing access site" means a site or area designated by the department as a fishing access site.~~

~~(10)~~ (11) "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

~~(11)~~ (12) "Mitigation" means an enforceable measure, within the authority of the agency or mutually agreed to by the permit holder that is designed to reduce or prevent undesirable effects or impacts of the proposed use.

~~(12)~~ (13) "Nonprofit organization" means an organization that is officially registered as a 501(c)~~(3)~~ tax exempt organization.

~~(13)~~ (14) "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of bona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

~~(14)~~ (15) "Ration" means to regulate use intensity by limiting the amount of use on a site.

~~(15)~~ (16) "Restricted water body" means a body of water regulated by special ~~department~~ rules governing commercial use, such as rules that restrict the timing, location, amount, or type of commercial use that occurs. "Restricted water body" ~~may also mean~~ includes a body of water that is under a cooperative management agreement with another agency concerning commercial use.

~~(16)~~ (17) "Site" means an individual unit of land, or portion thereof, owned or managed by the department.

~~(17) "State park" means a site or area designated by the department as a state park.~~

(18) "Water-based service provider" means any person who for consideration provides any facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to float or otherwise recreate on the water in the absence of hunting or angling, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a person in accompanying that person.

~~(19) "Wildlife management area" means a site or area designated by the department as a wildlife management area or a wildlife habitat protection area.~~

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.105 APPLICABILITY OF COMMERCIAL USE RULES (1) The following rules shall govern commercial use, as defined in ARM 12.14.101, that occurs on ~~lands under the control, administration, and jurisdiction of the~~ department land and restricted waterbodies. ~~Unless otherwise noted in these rules, these rules apply to fishing access sites, state parks, wildlife management areas, administrative sites, and other lands under the control, administration, and jurisdiction of the department.~~

(2) The department may apply these rules to leased lands and easements when specific terms, conditions, contracts, or agreements authorize the department ~~has authorization~~ to manage use of these lands. ~~This does not include block management lands or lands under a conservation easement.~~

(3) Noncompliance with the commercial use rules constitutes a violation of commission and board rules and regulations and as such may be punishable by citation and suspension or revocation of commercial use privileges at department sites.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.110 EXCEPTIONS TO APPLICABILITY OF COMMERCIAL USE RULES (1) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of manipulating, enhancing, or otherwise improving the habitat of a site. Such uses shall continue to be governed by the department's land lease-out policy. Examples include but are not limited to livestock grazing, farming, haying, fencing, and timber harvest.

(2) These commercial use rules do not apply to the leasing of department

land for communication towers, utility easements, and granting of right-of-way. These types of commercial use shall continue to be governed by the department's land lease-out policy.

(3) These commercial use rules do not apply to the leasing of department oil and gas reserves. These uses shall continue to be governed by the department's oil and gas reserves leasing policy.

(4) These commercial use rules do not apply to the transferring of vehicles or people to or from a department site.

(5) These commercial use rules do not apply to the collection of antlers.

(6) These commercial use rules do not apply to trapping or commercial activities under Title 87, chapter 4, parts 2 through 10, MCA (taxidermists, fur dealers, alternative livestock, shooting preserves, fish ponds, sale of game, menageries and zoos, game bird farms, and fur farms), except commercial dog training and field trials conducted for commercial purposes.

(7) These commercial use rules do not apply to the press or the news media when photographing, filming, or reporting on activities that occur on department land.

(8) These commercial use rules do not apply to consignment sales when the department sells merchandise on behalf of a business and a portion of the revenue is allocated to the department.

(9) These commercial use rules do not apply to commercial activities or uses that are initiated or invited by the department for the purpose of addressing public safety concerns. Examples include but are not limited to hazardous tree removal and fuel reduction efforts to reduce fire danger.

(10) These commercial use rules do not apply to fishing tournaments conducted by nonprofit organizations.

(11) These commercial use rules do not apply to an individual photographer or videographer operating on his or her own without the use of models, props, crew members, or clients.

(12) These commercial use rules do not apply to block management lands.

(13) These rules do not apply to concession contracts as described in ARM 12.14.155.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.115 GENERAL POLICY (1) Department land belongs to the people of Montana and is managed by the department ~~manages these sites and associated resources~~ in trust for the benefit of current and future generations of the people. The department's ~~primary~~ responsibilities ~~are to~~ include maintaining or enhanceing the fish, wildlife, natural, cultural, park, and recreational resources for public benefit ~~of these sites and to provide benefits to the public from these sites~~.

(2) Some types of commercial use can help the department to achieve its resource and visitor use management goals, ~~and/or~~ provide desired services and amenities to the public, and create economic benefits to nearby communities. ~~when properly managed.~~ Commercial use must be properly managed to protect the safety of visitors, prevent or minimize conflicts with the public, prevent adverse impacts to

natural and cultural resources, and ~~the~~ other intended purposes of a site.

(3) Commercial use on department land is a privilege, not a right. Authorization to conduct commercial use may be denied, amended, suspended, or revoked at any time for cause. Historical commercial use of a site does not convey a right to conduct commercial use in the future. If it becomes necessary to ration and allocate commercial use, the department is not required to allocate opportunities based on historical use of a site.

(4) The department may prohibit, restrict, condition, or otherwise manage commercial use, including placing stipulations on the type, timing, location, duration, and quantity of commercial use. Reasons for prohibiting, restricting, conditioning, or otherwise managing commercial use include but are not limited to:

(a) protecting resources or mitigating impacts to resources;

(b) preventing or minimizing conflicts with the intended purpose for which the department acquired, maintains, or manages a site;

(c) preserving the public's ability to recreate on or otherwise use a site;

(d) providing for the public's safety and welfare; or

(e) other purposes identified by the department.

(5) Restrictions, including prohibitions, rationing, and allocation on water-based outfitters and guides on rivers and fishing access sites shall be governed by the department's statewide river recreation rules.

(6) The purpose and management objectives can vary from one type of department land to another and from one site to another. The public's use and expectations can vary from one type of department land to another and from one site to another. The opportunities to conduct commercial use may be different depending upon where the use would occur, and the department may develop policies that provide additional guidance for managing commercial use ~~at fishing access sites, state parks, wildlife management areas, and other department land~~.

(7) The department may establish special criteria for a particular site or prohibit commercial use altogether based on the management objectives and conditions of that site.

(8) The department may prohibit or condition commercial use that would displace the general public. The department may temporarily alter public use opportunities at fishing access sites and state parks to accommodate commercial use on a case-by-case basis in the interest of public safety and security or when there is the potential for short-term conflicts.

(9) The department must comply with federal aid requirements when authorizing commercial use on department land purchased or managed with federal aid.

(10) Commercial hunting outfitting is prohibited on all department land and on water bodies that are located entirely within the boundaries of department land. Commercial fishing outfitting is prohibited on all wildlife management areas. The department may authorize commercial use that is solely for the purpose of assisting the public in the retrieval of legally harvested game animals. The department may authorize a commercial hunting outfitter to:

(a) travel on a designated trail across department land solely for the purpose of gaining access to publicly owned land where the commercial hunting outfitter is authorized to conduct use; and

(b) use a fishing access site solely for the purpose of gaining access to water bodies where the commercial hunting outfitter is authorized to conduct use.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.120 COMMERCIAL USE PERMITS (1) A permit is required in advance to conduct commercial use on department lands and restricted waterbodies ~~under the control, administration, and jurisdiction of the department~~.

~~(2) The department administers two types of commercial use permits:~~

~~(a) fishing access site permit; and~~

~~(b) restricted use permit.~~

~~(3)~~ (2) The department may issue a commercial use permit to a person as an individual, or as a representative of an entity or business. When authorizing water-based fishing outfitting or guiding, the department may only issue the permit to a licensed outfitter or guide. The applicant must obtain all other licenses or permits required by state or federal law in order to receive a commercial use permit.

~~(4) A commercial use permit is not a property right and may be revoked, amended, or suspended at any time for cause. Causes for revoking, amending, or suspending a permit include but are not limited to the following:~~

~~(a) failure to comply with the commercial use rules;~~

~~(b) failure to pay required permit fees;~~

~~(c) falsifying records of use;~~

~~(d) failure to comply with the terms of the permit;~~

~~(e) failure to comply with state or federal rules or laws pertaining to resource and land management;~~

~~(f) failure to obtain other required state or federal permits;~~

~~(g) impacts on resources or the public; or~~

~~(h) changing conditions or management objectives at a site.~~

~~(5) The availability, terms, and conditions of a commercial use permit may vary based on the regulations and management plan in place at the site where the use would occur. The department may issue a citation for failure to comply with the terms of the permit. The department may refuse applications for a permit if the use would occur at a site where commercial use is rationed and there are no additional opportunities to conduct such use.~~

(3) A commercial use permit authorizes the permittee to conduct commercial use subject to the conditions designated on the permit.

(4) A commercial use permit is valid for the time period specified on the permit, not to exceed five years. The permit holder may request changes to a multi-year permit through submission of an updated plan of operation or other material.

(5) The department may place conditions on the commercial use permit, including but not limited to the type, timing, location, duration, volume of the use, and any other conditions the department deems necessary. The department's statewide river recreation rules shall govern the development of conditions for water-based outfitters and guides on rivers and fishing access sites.

(6) The department may require commercial users to report their use of department land. The department may require commercial users to maintain and

have on their person for department inspection a logbook for recording commercial use. The department shall include specific reporting requirements as permit or contract stipulations.

(7) A commercial use permit may only be used by the holder of the permit. The permit holder may not sell, lease, or rent the permit, or otherwise receive compensation from another person for the opportunity to use the permit. The permit holder may hire or contract persons to provide authorized services provided that said persons do not recruit clients, make agreements with clients concerning monetary consideration or services provided, collect fees from clients, or advertise any business other than the permitted business when conducting the permitted use. The permit holder is responsible for ensuring that the persons hired or contracted comply with the terms of the permit.

(8) The permit holder may pay an agent to recruit clients, make arrangements with clients concerning monetary consideration or services provided, and collect fees from clients provided that the agent does not conduct the authorized services.

(9) A commercial use permit is not transferable and is void when a business is sold or transferred. Upon the sale or transfer of a permitted business, the person selling the business shall notify the new owner that the new owner is required to obtain a new commercial use permit pursuant to this subchapter.

(10) If the recipient of a commercial use permit sells or transfers in entirety the part of his/her business that is operated under that commercial use permit, the department shall issue a new commercial use permit to the new owner so long as the seller has remitted all fees due to the department and so long as the buyer has obtained all other licenses or permits required by state or federal law and agrees to the terms of the permit. The new permit shall have the same expiration date as the seller's permit.

(11) If the recipient of a commercial use permit sells or transfers in entirety the part of their business that operated under that commercial use permit, any rationed units of use that were previously allocated to the seller shall be reallocated to the new owner of that business. Upon the sale or transfer of a permitted business, the person selling or transferring the business shall notify the new owner that the use of rationed units of use is subject to change pursuant to rules adopted by the commission and that no property right attaches to the rationed units of use.

(12) The recipient of a commercial use permit may not sell, lease, rent, or otherwise receive compensation from another person for the opportunity to use client days or other allocated units of use, temporarily, or permanently except that Smith River outfitters may lease, rent, or otherwise receive compensation from another Smith River outfitter for the opportunity to use a Smith River outfitter launch within a single use season.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.125 FISHING ACCESS SITE PERMIT (1) An outfitter or water-based service provider must possess and have on their person a valid fishing access site permit when conducting commercial use at fishing access sites. ~~and other~~

~~department land, except an~~ An outfitter or water-based service provider with a valid ~~restricted~~ commercial use permit for a restricted water body does not need a fishing access site permit to conduct commercial use at fishing access sites ~~and other department land~~ that provide access to that restricted water body.

(2) A guide or person conducting work for a water-based service provider must possess and have on their person a valid fishing access site permit when conducting commercial use at fishing access sites ~~and other department land that provides access to water bodies~~.

(3) The department may issue a commercial use ~~A fishing access site~~ permit that authorizes an outfitter or water-based service provider to conduct commercial use at any fishing access site ~~or other department land~~ in the state that provides access to a nonrestricted water body ~~unless the department specifies that a restricted use permit is required for the site. An outfitter or water-based service provider must obtain a restricted use permit to conduct water-based outfitting at a fishing access site or other department land that provides access to a restricted water body~~. Such permits shall be referred to as fishing access site permits.

(4) The department may issue a ~~A~~ fishing access site permit that authorizes a guide or outfitter's assistant, operating under the authority of an outfitter, or a person conducting work for a water-based service provider, to conduct commercial use at any fishing access site ~~or other department land~~ for which the outfitter or water-based service provider is authorized to conduct use.

(5) A fishing access site permit is valid for the time period specified on the permit.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.130 ~~FISHING ACCESS SITE~~ COMMERCIAL USE PERMIT: APPLICATION PROCESS (1) A commercial use permit application must be submitted to the regional office that oversees the site or sites where the use will occur. If use is proposed for sites located in more than one department administrative region, the application may be submitted to one of the regional offices and the department may issue a single permit to authorize the use.

(2) The completed application shall be submitted at least 45 days before the use is intended to begin unless authorized by the department.

(3) The department will process complete applications. The department may require additional time to process an application if the department determines that an environmental analysis is required.

~~(1)~~ (4) A fishing access site permit may be obtained at a department regional office or through the department's internet licensing system so long as the applicant provides the required application information and remits the required permit fee.

~~(2)~~ (5) The department ~~may~~ requires the following when applying for a ~~fishing access site~~ commercial use permit when applicable:

(a) a completed permit application form;

(b) an outfitter or guide license number if providing angling services;

(c) an automated license system number;

(d) permit fee; ~~and~~

(e) deposit or damage security bond;

~~(e)~~ (f) proof of insurance that the department judges sufficient to protect the public and the state of Montana from liability and property loss~~.~~;

(g) proof of workers' compensation or an independent contractor exemption certificate;

(h) information explaining how the proposed use would benefit the public's resources or the public's enjoyment of the site; and

(i) other relevant information in sufficient detail to allow the department to evaluate the nature and impact of the proposed activity, including measures the applicant will use to prevent or mitigate adverse impacts.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.150 ~~RESTRICTED~~ COMMERCIAL USE PERMITTING DECISIONS

(1) The department has discretion over whether to issue a ~~restricted~~ commercial use permit. Permitting decisions are based on the following factors to the extent that they are relevant:

(a) conformance with laws, rules, policies, management plans, and land use plans;

(b) conformance with strategic vision and goals for the department;

~~(b)~~ (c) contribution to the overall mission, goals, and objectives of the site;

~~(c)~~ (d) public safety;

~~(d)~~ (e) conflicts with other users in regard to type of use, timing, duration, location, site capacity, and other similar considerations;

~~(e)~~ (f) ~~resource~~ impacts to natural and cultural resources ~~and protection~~;

~~(f)~~ (g) extent to which the public interest is served;

~~(g)~~ (h) effects on adjacent land;

~~(h)~~ (i) whether in the past the applicant complied with the terms of his/her permit or other authorization from the department and other agencies;

~~(i)~~ (j) whether the department has the fiscal and human resources to ~~oversee~~ administer the proposed use; and

~~(j)~~ (k) such other circumstances that the department finds appropriate.

(2) The availability, terms, and conditions of a ~~restricted~~ commercial use permit may vary based on the regulations and management plan in place at the site where the use would occur. Permitting decisions for commercial use at a wildlife management area must comply with a statewide plan for authorizing and administering commercial use at wildlife management areas. The statewide commercial use plan for wildlife management areas shall:

(a) identify the types of commercial use that may be authorized;

(b) establish the general terms and conditions that may be authorized; and

(c) establish the methods for allocating commercial use permits.

(3) The department's statewide river recreation rules shall govern permitting decisions that would ration, allocate, or otherwise restrict water-based outfitting and guiding opportunities on rivers and fishing access sites. This does not include permitting decisions when the applicant or permit holder has violated the terms of a permit or violated department rules or regulations.

(4) Upon adoption of these rules, the department may continue to issue permits that were established prior to the adoption of these rules. The department shall administer these permits consistent with these commercial use rules.

(5) For permit systems established prior to the adoption of these commercial use rules, when a ~~restricted~~ commercial use permit expires, the department shall review the previously authorized commercial use and may issue a new ~~restricted~~ commercial use permit to the permit holder upon application so long as the applicant complied with the terms of his/her permit or other authorization from the department and other agencies and so long as the applicant complied with the laws, rules, and policies of the department and other agencies. The department may adjust the terms and conditions of the new permit, including the allocated units of use.

(6) For permit systems established after the adoption of these commercial use rules, the department may develop a permit renewal system under which the previous permit holder and other commercial users are eligible to apply for the new permit. The department's statewide river recreation rules shall govern the development of a permit renewal system for water-based outfitting and guiding on rivers and fishing access sites.

~~(7) The regional park manager shall be responsible for restricted use permitting decisions at state parks and fishing access sites. The regional supervisor shall be responsible for restricted use permitting decisions at wildlife management areas.~~

~~(8)~~ (7) A person who has been denied a ~~restricted~~ commercial use permit or a person whose commercial use permit has been suspended or ~~cancelled~~ revoked may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal.

~~(9)~~ (8) The director or the director's designee shall issue a written decision on the appeal. The director's decision is final.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.155 CONCESSION CONTRACT (1) The department shall waive the requirement to obtain a commercial use permit when the commercial use is authorized through a concession contract. The department may develop a concession contract to authorize a commercial business on department land when the department determines that the concession is needed to meet the management goals or enhance visitor experience for a specific site. Food and beverage concessions are generally not considered necessary for meeting the management goals for fishing access sites and wildlife management areas. ~~The department shall waive the requirement to obtain a commercial use permit when the commercial use is authorized through a concession contract.~~

(2) The department shall honor the terms set forth in contracts established prior to the adoption of these rules. The department shall apply these rules when those contracts ~~expire~~ are renewed.

(3) When developing and administering concession contracts, the department shall follow the state purchasing and contracting guidelines.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.160 COMMERCIAL USE FEES (1) The department may require payment of fees for conducting commercial use on department land ~~owned or managed by the department~~. Commercial use fees for state parks shall be adopted by the board. ~~Permit~~ Commercial use fees for all other department land ~~pursuant to this rule~~ shall be ~~established through~~ adopted by the commission ~~rulemaking~~. The department ~~shall~~ may establish concession contract fees separately on a case-by-case basis. The commission and board may adjust permit fees as necessary to reflect changes in costs and the market and in situations where the department has an agreement or joint-permit system with other agencies.

(2) The department may consider the following when selecting a fee system from the commercial use fee rules:

(a) the types of commercial use that occur at the site;

(b) the cost of administering the commercial use permit and monitoring the commercial use;

(c) the amount of revenue generated by the commercial use fee;

(d) the overall benefit of the commercial use to visitor enjoyment and experience;

(e) input from the commercial users;

(f) consistency with fee systems in place on other department land;

(g) consistency with other state and federal fee systems; and

(h) other factors identified by the department.

(3) Fishing access site permit fees are not refundable.

~~(2)~~ (4) The department has discretionary authority to adjust a ~~restricted~~ commercial use permit fee upward or downward to accommodate the nature of the activity, compensate for site impacts or department staffing needs, or for other unique circumstances pertaining to the permitted activity.

~~(3)~~ (5) The department may adjust commercial use fees on a case-by-case basis for educational groups when the following conditions are met:

(a) the group is from a bona fide institution that meets the definition of an educational group;

(b) the group provides an acceptable written explanation of the educational purpose of the visit; and

(c) the use is not primarily for recreational purposes.

~~(4)~~ (6) The department may adjust commercial use fees on a case-by-case basis when the commercial use permit holder:

(a) donates all proceeds, minus expenses, from the use or event to the management or improvement of fish, wildlife, ~~and~~ or parks, including the maintenance, management, or the improvement or development of facilities; or

(b) donates all proceeds, minus expenses, from the event or activity to a nonprofit organization or charitable cause and is not compensated for the service.

~~(5)~~ (7) The department may adjust commercial use fees on a case-by-case basis for special events involving children under the age of thirteen.

~~(6)~~ (8) The department may adjust commercial use fees on a case-by-case

basis for commercial use when the sole purpose of the use is to promote department land and resources.

~~(7)~~ (9) The department may charge a processing fee for recovery of costs associated with preparing an environmental analysis document when processing a permit application.

~~(8)~~ (10) The department may charge a processing fee for recovery of costs associated with issuing a new ~~restricted~~ commercial use permit when a business is sold or transferred.

~~(9)~~ (11) Applicants must pay the required fees by the date specified in the terms of the permit.

~~(10)~~ (12) With approval from the Legislature, the department shall use the permit fees from commercial use at fishing access sites to help support the fishing access site program, river recreation management, and enforcement.

~~(11)~~ (13) The department may retain, amend, or replace an existing fee system.

~~(12)~~ (14) The department may require a minimum annual fee for administering permits or when authorizing commercial use in cooperation with another agency.

~~(13)~~ (15) The department may require a permit holder to pay a fee in advance that is an estimate of the actual amount that will be due by the date specified in the terms of the permit.

~~(14)~~ (16) The department may suspend or revoke a permit, or assess a penalty fee if the fee is not paid in full by the date specified in the terms of the permit.

AUTH: ~~2-4-102,~~ 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: ~~2-4-102,~~ 23-1-105, 23-1-106, 87-1-303, MCA

12.14.165 RATIONING AND ALLOCATION OF COMMERCIAL USE

(1) The department's statewide river recreation rules shall govern the rationing and allocation of commercial use on rivers, including fishing access sites that provide access to rivers.

(2) The ~~regional park manager or regional supervisor~~ department may recommend that the commission or board ration and allocate commercial use ~~at a state park, wildlife management area, fishing access site~~ on department land that provides access to lakes, or department administrative site. The department may consider the following when making rationing and allocation recommendations to the commission or board:

(a) laws, rules, policies, management plans, and land use plans for the site;
(b) overall mission, goals, and objectives of the site;
(c) input from the public;
(d) public safety concerns;
(e) biological, natural, or cultural resource conditions;
(f) social conditions;
(g) user conflicts;
(h) past performance of commercial users;
(i) public demand for commercial use; and

(j) other factors as determined by the department.

(3) The department shall describe what actions have already been taken ~~by the department~~ to address a particular problem or concern, why rationing is necessary, and how rationing of use would address a particular problem or concern.

(4) To the extent possible, the department must monitor and evaluate commercial use of a site to determine whether rationing is necessary and to assess whether rationing has improved conditions.

AUTH: 23-1-105, 23-1-106, 23-1-111, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

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

NEW RULE I SUSPENSION OR REVOCATION OF PERMIT (1) A commercial use permit is not a property right and may be suspended or revoked for cause.

(2) The department may suspend a permit for up to six months. When a permit is suspended, the permit holder may not conduct commercial use authorized by the permit during the period of the suspension. The department shall determine the duration of the suspension, including when the suspension shall go into effect, based on the severity of the violations.

(3) Causes for suspending a permit include:

(a) repeated willful, purposeful, or negligent violation of the commercial use rules or specific river use rules;

(b) repeated willful, purposeful or negligent falsification of use records;

(c) repeated willful, purposeful or negligent failure to comply with the terms of the permit;

(d) acts that negatively limit the opportunities or use by the general public of resources covered under the permit;

(e) acts that are harmful to natural resource values; and

(f) acts that endanger the health, safety, and welfare of the public.

(4) When a permit is revoked, the permit is no longer valid and the former permit holder is no longer authorized to conduct commercial use at locations authorized under the revoked permit.

(5) Causes for revoking a permit include the following:

(a) conducting commercial use while a permit is suspended;

(b) repeated willful, purposeful, or negligent violation of the commercial use rules or specific river use rules after having been formally placed on suspension;

(c) repeated willful, purposeful, or negligent falsification of use records after having been formally placed on suspension; and

(d) repeated failure to comply with the terms of the permit after having been formally placed on suspension.

(6) Upon revocation of a permit, any rationed units of use that were previously allocated to the permit holder are no longer valid and the department may reallocate the rationed units of use to another applicant.

(7) A person whose permit has been revoked may reapply for a permit after a period of three full-use seasons from the date on which the permit was revoked.

There is no guarantee that a permit will be available at the time that person reapplies for a permit. Any rationed units of use that were previously allocated to the permit holder for use on a restricted use river will not be reserved.

(8) A person whose permit has been suspended or revoked may appeal the permitting decision in writing to the director within 30 days of the date of mailing of the notice of the permitting decision. Persons not appealing within 30 days have waived their right to appeal. The director's decision is final.

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

5. The department proposes to repeal the following rules:

12.14.135 FISHING ACCESS SITE PERMITTING DECISIONS

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.140 RESTRICTED USE PERMIT

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

12.14.145 RESTRICTED USE PERMIT: APPLICATION PROCESS

AUTH: 23-1-105, 23-1-106, 87-1-301, 87-1-303, MCA
IMP: 23-1-105, 23-1-106, 87-1-303, MCA

REASON: The commission adopted the commercial use rules in 2005 and amended the rules in 2009. Since then several administrative changes have occurred, including the establishment of the board by the 2013 Legislature, requiring amendments to the rules. The proposed amendments incorporate language that was previously found in the commercial fee rule which is more appropriate for the administrative rule. The amendments discontinue the term "restricted use permit." The restricted use permit and fishing access site permit will be referred to as commercial use permits to simplify the permit system and make the intent of the permit clear. Amendments also further specify the criteria when the department may adjust the commercial use fees. The proposed changes will require the permit holder to donate all proceeds, minus expenses, in order to be considered for a fee adjustment. The commission and board are proposing a new rule that will provide a greater explanation of the causes for suspending and revoking a permit.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Fish, Wildlife and Parks, Attn: Commercial Use Rules, P.O. Box 200701, Helena, MT 59620-0701; fax (406) 444-4952; or e-mail FWPCommercialUseComments@mt.gov, and must be received no later than June

13, 2014.

7. Jessica Snyder or another hearing officer appointed by the department has been designated to preside over and conduct the hearing.

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

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

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

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

/s/ Tom Towe
Tom Towe, Chairman
State Parks and Recreation Board

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ Dan Vermillion
Dan Vermillion, Chairman
Fish and Wildlife Commission

Certified to the Secretary of State April 28, 2014.

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

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

TO: All Concerned Persons

1. On May 30, 2014, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing in the second floor conference room (conference rooms A and B), 1805 Prospect Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 23, 2014, to advise us of the nature of the accommodation that you need. Please contact the Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; telephone (406) 444-1741; fax (406) 444-7071; TDD (406) 444-0532; or e-mail MSmith3@mt.gov.

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

24.17.127 ADOPTION OF STANDARD PREVAILING RATE OF WAGES

(1) through (1)(d) remain the same.

(e) The current building construction services rates are contained in the ~~2013~~ 2014 version of the "Montana Prevailing Wage Rates for Building Construction Services" publication.

(f) The current nonconstruction services rates are contained in the ~~2013~~ 2014 version of the "Montana Prevailing Wage Rates for Nonconstruction Services" publication.

(g) The current heavy construction services rates are contained in the ~~2011~~ 2014 version of the "Montana Prevailing Wage Rates for Heavy Construction Services" publication.

(h) The current highway construction services rates are contained in the ~~2013~~ 2014 version of the "Montana Prevailing Wage Rates for Highway Construction Services" publication.

(2) and (3) remain the same.

AUTH: 2-4-307, 18-2-409, 18-2-431, MCA
IMP: 18-2-401, 18-2-402, 18-2-403, 18-2-406, 18-2-411, 18-2-412, 18-2-413, 18-2-414, 18-2-415, 18-2-422, 18-2-431, MCA

REASON: There is reasonable necessity to update the prevailing wage rates for building construction services, heavy construction and highway construction services, and nonconstruction services following the annual survey of wages that is provided for in 18-2-413, 18-2-414, and 18-2-415, MCA, respectively. The department surveys employers and applies the methodologies provided by ARM 24.17.119 through 24.17.122 to determine those prevailing wage rates.

4. A copy of the proposed 2014 publications, identified as "preliminary building construction rates," "preliminary highway construction rates," "preliminary heavy construction rates," and "preliminary nonconstruction rates" are available and can be accessed online via the internet at: www.mtwagehourbopa.com.

5. A printed version of the proposed 2014 publications is also available by contacting Mike Smith at the address, e-mail, or telephone numbers listed in paragraph two of this notice.

6. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Labor Standards Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Mike Smith, P.O. Box 201503, Helena, MT 59620-1503; fax (406) 444-7071; TDD (406) 444-0532; or e-mailed to MSmith3@mt.gov, and must be received no later than 5:00 p.m., June 6, 2014.

7. An electronic copy of this notice of public hearing is available through the department's web site at http://dli.mt.gov/events/calendar.asp, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this notice of public hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

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 or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

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.

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

/s/ JUDY BOVINGTON	/s/ PAM BUCY
Judy Bovington	Pam Bucy, Commissioner
Rule Reviewer	DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 28, 2014.

BEFORE THE BOARD OF ATHLETIC TRAINERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On May 29, 2014, at 9:00 a.m., a public hearing will be held in the Small Conference Room, 4th Floor, 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 Athletic Trainers (board) no later than 5:00 p.m., on May 23, 2014, to advise us of the nature of the accommodation that you need. Please contact Cynthia Reichenbach, Board of Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdatr@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 an athletic trainer.

(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 an athletic trainer. Satisfactory evidence includes:

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

(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 Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdatr@mt.gov, and must be received no later than 5:00 p.m., June 6, 2014.

5. An electronic copy of this notice of public hearing is available at www.athletictrainer.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 Athletic Trainers, 301 South Park Avenue, P.O. Box

200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdatr@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 Athletic Trainers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; facsimile (406) 841-2305; or e-mail to dlibsdatr@mt.gov.

9. Kevin Maki, attorney, has been designated to preside over and conduct this hearing.

BOARD OF ATHLETIC TRAINERS
CHRIS HEARD, 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 April 28, 2014

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

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

TO: All Concerned Persons

1. On March 27, 2014, the Board of Outfitters (board) published MAR Notice No. 24-171-33 regarding the public hearing on the proposed adoption of the above-stated rule, at page 562 of the 2014 Montana Administrative Register, Issue No. 6. A public hearing was scheduled in the notice to be held on April 18, 2014, in Helena.

2. It was subsequently discovered that an error had occurred and the proposal notice had not been sent to all interested persons as required by the Montana Administrative Procedure Act. Therefore, the board is reissuing this proposal notice and is rescheduling the public hearing as shown below.

3. On May 29, 2014 at 9:30 a.m. a public hearing will be held in the Small Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rule.

4. 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 Outfitters no later than 5:00 p.m., on May 23, 2014, to advise us of the nature of the accommodation that you need. Please contact Steve Gallus, Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2370; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdout@mt.gov.

5. 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 an outfitter or guide.

(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 an outfitter or guide. 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.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Outfitters, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdout@mt.gov, and must be received no later than 5:00 p.m., June 6, 2014.

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

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

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

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

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

BOARD OF OUTFITTERS
ROBIN CUNNINGHAM, 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 April 28, 2014

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

In the matter of the amendment of ARM 24.210.401 and 24.210.801 fee schedule, 24.210.666 and 24.210.834 course provider, 24.210.667, 24.210.674, and 24.210.677 continuing real estate education, and 24.210.835, 24.210.840, and 24.210.843 continuing property management education	))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 29, 2014, at 11:00 a.m., a public hearing will be held in the Large Conference Room, 4th Floor, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment 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 May 23, 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) 841-2323; e-mail dlibsdrre@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The board determined it is reasonably necessary to rewrite the continuing education program rules to streamline the process and eliminate unnecessary confusion. The board appointed a task force to recommend rule changes to the board that would eliminate duplication of the course and instructor approval processes. The task force also suggested amendments that will connect the course and instructor applications to eliminate confusion when instructor and course approvals expire at different times. The board is proposing these amendments to implement the recommendations, now that the task force review is complete.

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

24.210.401 FEE SCHEDULE (1) through (14) remain the same.

(15) Continuing education course and instructor application for approval or renewal ~~130~~ 150

~~(16) Education course instructor application for approval or~~

~~renewal~~ ~~87.50~~

(17) through (24) remain the same, but are renumbered (16) through (23).

AUTH: 37-1-131, 37-1-134, 37-51-203, MCA
IMP: 37-1-131, 37-1-134, 37-1-141, 37-51-202, 37-51-204, 37-51-207, 37-51-301, 37-51-302, 37-51-303, 37-51-305, 37-51-308, 37-51-309, 37-51-311, 37-51-502, MCA

REASON: The board determined it is reasonable and necessary to amend the fees for property management continuing education course applications to align with other proposed amendments that combine the course and instructor applications into one. Raising the course application fee slightly reflects the additional processing, reviewing, and monitoring involved in a more complex application. Eliminating the instructor application and fee reduces revenue that would cover the processing, reviewing, and monitoring of a separate application. The board estimates the fee changes in this rule and ARM 24.210.801 will affect 259 course and instructor applicants and result in approximately $4,710 less annual revenue.

24.210.666 COURSE PROVIDER (1) through (3) remain the same.

(4) All continuing education courses administered by a board-approved provider must be scheduled on the board's electronic education calendar not less than 30 days prior to the course offering.

(5) The course provider must provide course and instructor evaluation forms approved by the board to each attending licensee. A board representative may collect the forms and forward them to the board office.

(6) The course provider must maintain courses and instructor evaluations for two years from the date of the course. The board may request copies of the course and instructor evaluations and the provider must provide them to the board.

(7) The course provider must verify attendance of each licensee and must supply each attending licensee with a course completion certificate.

(8) A board representative may at no charge audit any board-approved courses for rule compliance.

(9) All continuing education course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.

(10) The course provider must report all education attendance in a format approved and provided by the board.

(11) Failure to accurately and timely provide attendance information to the board may result in withdrawal of the course provider approval.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-204, 37-51-302, MCA

REASON: The board is amending this rule to clearly reflect the duties and responsibilities of course providers. The board is adding (4) to require that all approved courses are scheduled on the board's electronic education calendar to provide a single location for licensees to find education programs in their region or

on subjects of interest. This change will also provide more immediate information to licensees regarding the availability of courses and the providers associated with course offerings.

The board is relocating course provider responsibilities from ARM 24.210.667, the general continuing real estate education rule, to (5) and (7) through (11) of this rule, which specifically address course provider duties and responsibilities. While these duties and responsibilities are already in place, the board concluded that relocating the provisions will make it easier and simpler for course providers to find and determine their duties and responsibilities. This change will also address potential confusion regarding whether general subsections only apply to licensees in general, rather than course providers, since there are subsections on course provider duties and responsibilities in the real estate education rules.

The board is adding (6) to require course providers to retain copies of course and instructor evaluations for two years, and submit them to the board upon request. This change will give the board the necessary tools to investigate possible course and instructor impropriety, as the board may ask providers to send copies of evaluations to help determine the existence of inaccurate information or substantiate accusations.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) Each active licensee is required to annually complete a board-mandated core education course of a length established by the board every year. The board-mandated core education does not apply to meeting the continuing education requirement provided for in (2), except as provided in ~~(18)~~ (11) and ~~(19)~~ (12).

(2) In addition to the board-mandated core education course, each active licensee is required to complete a minimum of 12 hours of continuing real estate education every year, at least four hours of which must be from mandatory topics identified by the board.

(3) through (5) remain the same.

~~(6) The required hours shall be in real estate related courses approved by the board.~~

~~(7)~~ (6) By August 1 of each year, the board will identify topics in which the required hours of education must be obtained for the following reporting year. The board, in its discretion, may adjust the topics at any time. ~~A minimum of four hours must come from the mandatory topics identified by the board.~~

(8) and (9) remain the same, but are renumbered (7) and (8).

~~(10) The course provider must supply each licensee with a course completion certificate and student evaluation form approved by the board and must verify attendance of each licensee.~~

~~(11) Course and instructor evaluation forms approved by the board must be provided and may be collected by a board representative and forwarded to the board office.~~

~~(12) A board representative may, at no charge, audit all board-approved courses for rule compliance.~~

~~(13) All continuing education course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.~~

~~(14) The course provider must report all education attendance in a format approved and provided by the board.~~

~~(15) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course provider approval.~~

~~(16)~~ (9) All continuing education courses must be taken and completed within the reporting period, except as provided under law for lapsed or expired licenses.

(17) through (21) remain the same, but are renumbered (10) through (14).

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The board is amending this rule to move the requirement of four mandatory education hours to (2), as this section is more applicable to the subject of hourly requirements.

It is reasonably necessary to relocate the course provider requirements in (10) through (15) of this rule to ARM 24.210.666, the specific rule on real estate course provider duties and responsibilities.

The board is amending (9) to add an exception to the requirement for completing all continuing education during the licensing year for lapsed or expired licenses. The law allows a lapsed or expired license to be reinstated by meeting continuing education requirements prior to license reinstatement and this change iterates what currently exists in statute.

24.210.674 CONTINUING REAL ESTATE EDUCATION - COURSE APPROVAL (1) Requests for approval of a continuing real estate education course must be made on forms approved by the board or its designee and submitted at least ~~30~~ 60 days prior to the date of the intended course, with payment of the required fee.

(2) remains the same.

(3) Course applications must provide, at a minimum:

(a) course name;

(b) course topic;

(c) number of hours requested;

(d) timed outline in five-minute increments;

(e) learning objectives/outcomes;

(f) complete instructor application for each course; and

(g) rating of the degree of difficulty of the course based on the following criteria:

(i) Basic: These activities will be instructional for all licensees, regardless of their level of experience.

(ii) Intermediate: These activities build beyond the basic by introducing new material.

(iii) Advanced: These activities are specialized and challenging. They go beyond the instruction of new material at an intermediate level.

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

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The board determined it is reasonably necessary to amend the application deadline in (1) from 30 to 60 days, as it is unrealistic to expect the board to fully review an application and determine if approval is appropriate within 30 days. The board meets every six to eight weeks and the 60-day deadline will provide more time for proper board review.

The board is adding (3) to clearly set forth in rule the minimum documentation required on a course application. Currently, the minimum requirements are set forth in the application forms, with the exception of the rating of difficulty for each course. The board is adding this rating of degree of course difficulty to provide licensees more information when choosing courses. Licensees may be looking for a basic course on a new subject, or for a more advanced class that offers a higher level of instruction. This new requirement will allow the licensee to take an education course that is of an appropriate difficulty level and will benefit and advance their knowledge of a subject.

24.210.677 CONTINUING REAL ESTATE EDUCATION - INSTRUCTOR APPROVAL (1) Request for approval of a continuing education instructor must be made on forms approved by the board or its designee and submitted with a course application at least ~~30~~ 60 days prior to the date of the intended instruction ~~with payment of the required fee~~.

~~(2) The initial approval of an instructor will be in effect for the remainder of that calendar year, and the next calendar year in its entirety, expiring on December 31. Approval may be revoked for cause.~~

~~(3)~~ (2) Approved real estate continuing education instructors must have:

~~(a) at least a bachelor's degree in a field traditionally associated with the subject matter of real estate or current experience or qualifications approved by the board; or~~

~~(b) a designated real estate instructor or other nationally-recognized instructor designation.~~

(a) five years of experience in real estate sales, a current broker license, and evidence of prior adult learner teaching or training (training manager of a large office, trainer of another license type, DREI or CREI), or an education degree; or

(b) five years of practice in the area of the instruction topic.

(3) Approved supervising broker preendorsement instructors must have:

(a) three years as a supervising broker, completed either the trust account or broker preendorsement course, and evidence of prior adult learner teaching, training (training manager of a large office, trainer of another license type, or DREI), or an education degree; or

(b) five years of practice in the area of the instruction topic.

(4) Approved core course instructors must have a current approval as a real estate instructor and complete the board-sponsored core course Train-the-Trainer.

(4) remains the same, but is renumbered (5).

~~(5)~~ (6) Instructor approval will be for ~~specific topics~~ a course and will not carry over to other ~~topics of education~~ courses. An instructor must make application for each ~~topic~~ course and may not be deemed approved for other ~~topics~~ courses, without approval from the board or its designee.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The board is amending the course approval application deadline in ARM 24.210.674 from 30 to 60 days, as it is unrealistic to expect the board to fully review an application and determine if approval is appropriate within 30 days. The board meets every six to eight weeks and the 60-day deadline will provide more time for proper board review. The board is striking (2) to eliminate the separate instructor approval period, because the instructor application is being combined with the course application and the expiration of those approvals will be the same.

The board determined it is reasonably necessary to amend instructor qualifications to inform educators, licensees, and the general public what is considered acceptable experience or other qualifications. Current rules allow the board to determine qualifications on an individual basis, which can result in arbitrary approval or denial. Setting out minimum instructor qualifications, while recognizing practical experience as a viable means to gain approval, will provide necessary information to education instructors, providers, and licensees in determining who is eligible to teach continuing education and what criteria will be used to evaluate the applicant.

The instructor application will now be reviewed for approval in concert with the course application for the course the instructor will teach. Instructor approval will be for a specific course instead of a more general topic. The board is amending (6) to clarify that each course and instructor are tied together and the approved instructor, and no other person, is approved to teach that specific course. Each course application must now also include a corresponding instructor application.

24.210.801 FEE SCHEDULE (1) through (10) remain the same.

(11) Continuing education course application ~~130~~ 150

~~(12) Education course instructor application for approval or renewal 87.50~~

(13) through (17) remain the same, but are renumbered (12) through (16).

AUTH: 37-1-134, 37-51-203, MCA
IMP: 37-1-134, 37-1-141, 37-51-207, MCA

REASON: The board determined it is reasonable and necessary to amend the fees for property management education course applications to align with other proposed amendments that combine the course and instructor applications into one. Raising the course application fee slightly reflects the additional processing, review, and monitoring involved in a more complex application. Eliminating the instructor application and fee reduces revenue that would cover the processing, reviewing, and monitoring of a separate application. The board estimates the fee changes in this

rule and ARM 24.210.401 will affect 259 course and instructor applicants and result in approximately $4,710 less annual revenue.

24.210.834 COURSE PROVIDER (1) through (3) remain the same.

(4) All continuing education courses administered by a board-approved provider must be scheduled on the board's electronic education calendar not less than 30 days prior to the course offering.

(5) The course provider must provide course and instructor evaluation forms approved by the board to each attending licensee. A board representative may collect the forms and forward them to the board office.

(6) The course provider must maintain courses and instructor evaluations for two years from the date of the course. The board may request copies of the course and instructor evaluations and the provider must provide them to the board.

(7) The course provider must verify the attendance of each licensee and must supply each attending licensee with a course completion certificate.

(8) A board representative may at no charge audit any board-approved courses for rule compliance.

(9) All continuing education course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.

(10) The course provider must report all education attendance in a format approved and provided by the board.

(11) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course provider approval.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-204, ~~37-51-302,~~ 37-51-603, MCA

REASON: The board has determined it is reasonable and necessary to amend the course provider rules to clearly reflect the duties and responsibilities of the course provider. The requirement that all approved courses must be scheduled on the electronic education calendar on the board's web site will give licensees a single source to locate education programs in their region or on subjects of interest. This will provide more immediate information to licensees regarding the availability of courses and the providers associated with course offerings.

The board is relocating course provider responsibilities from ARM 24.210.835, the general continuing property management education rule, to (5) and (7) through (11) of this rule, which specifically addresses property management course provider duties and responsibilities. While these duties and responsibilities are already in place, the board concluded that relocating the provisions will make it easier and simpler for course providers to find and determine their duties and responsibilities. This change will also address potential confusion regarding whether general subsections only apply to licensees in general, rather than course providers, since there are subsections on course provider duties and responsibilities in the property manager education rules.

The board is adding (5) to require that evaluations be provided to the students. Evaluations are intended to provide feedback to instructors/providers and help improve class quality. This amendment also specifies that when board representatives audit a class, they may collect evaluations and send them to the board office. These provisions reflect current board procedures for quality assurance and compliance, but were not previously set forth in rule.

The board is adding (6) to require course providers to retain copies of course and instructor evaluations for two years, and submit them to the board upon request. This change will give the board the necessary tools to investigate possible course and instructor impropriety, as the board may ask providers to send copies of evaluations to help determine the existence of inaccurate information or substantiate accusations.

It is reasonable and necessary to add (8) and clearly state that the board is allowed to, and may at no charge audit any board-approved course offerings to ensure compliance with rules, attendance procedures, and course content. This provision reflects current board procedures for quality assurance and compliance, but was not previously set forth in rule.

The board is amending the implementation citations to accurately reflect all statutes implemented through the rule.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) Each active licensee is required to annually complete a board-mandated core education course of the length established by the board every year. The board-mandated core education does not apply to meeting the continuing education requirement provided for in (2), except as provided in ~~(16)~~ (10) and ~~(17)~~ (11).

(2) In addition to the board-mandated core education course, each active licensee is required to complete a minimum of 12 hours of board-approved continuing property management education every year, at least four hours of which must be from mandatory topics identified by the board.

(3) remains the same.

(4) Courses completed after the renewal deadline will result in a late renewal and penalty, regardless of when the licensee submits the renewal application.

(4) remains the same, but is renumbered (5).

~~(5) The required hours shall be in courses approved by the board.~~

(6) By August 1 of each year, the board will identify topics in which the required hours of education must be obtained. The board, in its discretion, may adjust the topics at any time. ~~A minimum of four hours must come from the mandatory topics identified by the board.~~

(7) remains the same.

~~(8) The course provider must supply each licensee with a course completion certificate and student evaluation form approved by the board and must verify attendance of each licensee.~~

~~(9) The course provider must provide board-approved course and instructor evaluation forms to course attendees. A board representative may collect the forms and forward them to the board office.~~

~~(10) A board representative may, at no charge, audit all board-approved courses for rule compliance.~~

~~(11) All continuing education course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.~~

~~(12) The course provider must report all education attendance in a format approved and provided by the board.~~

~~(13) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course provider approval.~~

~~(14)~~ (8) All continuing education courses must be taken and completed within the reporting period, except as provided under law for lapsed or expired licenses. No carryover hours will be accepted from one reporting period to another, except as provided in ARM 24.210.829.

(15) through (19) remain the same, but are renumbered (9) through (13).

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-141, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The board is amending this rule to move the requirement of four mandatory education hours to (2), as this section is more applicable to the subject of hourly requirements.

It is reasonably necessary to relocate the course provider requirements in (8) through (13) of this rule to ARM 24.210.834, the rule that specifically addresses property management course provider duties and responsibilities.

The board is adding (4) to clarify the applicability of late renewal penalties for courses completed after renewal deadlines and mirror the same requirement for continuing real estate education already included in ARM 24.210.667. The board notes that this provision was inadvertently omitted from this rule in a previous rule project.

The board is amending (8) to add an exception to the requirement for completing all continuing education during the licensing year for lapsed or expired licenses. The law allows a lapsed or expired license to be reinstated by meeting continuing education requirements prior to license reinstatement and this change iterates what currently exists in statute.

24.210.840 CONTINUING PROPERTY MANAGEMENT EDUCATION - COURSE APPROVAL (1) Requests for approval of a continuing property management education course must be made on forms approved by the board or its designee and submitted at least ~~30~~ 60 days prior to the date of the intended course, with payment of the required fee.

(2) remains the same.

(3) Course applications must provide, at a minimum:

(a) course name;

(b) course topic;

(c) number of hours requested;

(d) timed outline in five-minute increments;

(e) learning objectives/outcomes;

(f) complete instructor application for each course; and

(g) rating of the degree of difficulty of the course based on the following criteria:

(i) Basic: These activities will be instructional for all licensees, regardless of their level of experience.

(ii) Intermediate: These activities build beyond the basic by introducing new material.

(iii) Advanced: These activities are specialized and challenging. They go beyond the instruction of new material at an intermediate level.

(3) through (6) remain the same, but are renumbered (4) through (7).

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, 37-51-204, MCA

REASON: The board determined it is reasonably necessary to amend the application deadline in (1) from 30 to 60 days, as it is unrealistic to expect the board to fully review an application and determine if approval is appropriate within 30 days. The board meets every six to eight weeks and the 60-day deadline will provide more time for proper board review.

The board is adding (3) to clearly set forth in rule the minimum documentation required on a course application. Currently, the minimum requirements are set forth in the application forms, with the exception of the rating of difficulty for each course. The board is adding this rating of degree of course difficulty to provide licensees more information when choosing courses. Licensees may be looking for a basic course on a new subject, or for a more advanced class that offers a higher level of instruction. This new requirement will allow the licensee to take an education course that is of an appropriate difficulty level and will benefit and advance their knowledge of a subject.

24.210.843 CONTINUING PROPERTY MANAGEMENT EDUCATION - INSTRUCTOR APPROVAL (1) Request for approval of a continuing education instructor must be made on forms approved by the board or its designee and submitted with a course application at least ~~30~~ 60 days prior to the intended instruction ~~with payment of the required fee~~.

~~(2) The initial approval of an instructor will be in effect for the remainder of that calendar year and the next calendar year in its entirety, expiring December 31. Approval may be revoked for cause.~~

~~(3)~~ (2) Approved property management instructors must have:

~~(a) at least a bachelor's degree in a field traditionally associated with the subject matter of property management or current experience or qualifications approved by the board; or~~

~~(b) a designated real estate instructor or other nationally recognized instructor designation.~~

(a) five years of experience in property management, a current property management license, evidence of prior adult learner teaching or training (training manager of a large office, trainer of another license type, DREI or CREI), or an education degree; or

(b) five years of practice in their area of instructional topic.

(3) Approved core course instructors must have current approval as a property management instructor and complete the board-sponsored core course Train-the-Trainer.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA
IMP: 37-1-131, 37-1-306, 37-1-319, 37-51-202, MCA

REASON: The board is amending the course approval application deadline in ARM 24.210.840 from 30 to 60 days, as it is unrealistic to expect the board to fully review an application and determine if approval is appropriate within 30 days. The board meets every six to eight weeks and the 60-day deadline will provide more time for proper board review. The board is striking (2) to eliminate the separate instructor approval period, because the instructor application is being combined with the course application and the expiration of those approvals will be the same.

The board determined it is reasonably necessary to amend instructor qualifications to inform educators, licensees, and the general public what is considered acceptable experience or other qualifications. Current rules allow the board to determine qualifications on an individual basis, which can result in arbitrary approval or denial. Setting out minimum instructor qualifications, while recognizing practical experience as a viable means to gain approval, will provide necessary information to education instructors, providers, and licensees in determining who is eligible to teach continuing education and what criteria will be used to evaluate the applicant.

The instructor application will now be reviewed for approval in concert with the course application for the course that the instructor will teach. Instructor approval will be for a specific course instead of a more general topic. This proposed amendment clarifies that each course and instructor are tied together and the approved instructor, and no other person, is approved to teach that specific course. Each course application must now also include a corresponding instructor application.

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) 841-2323, or e-mail to dlibsdrre@mt.gov, and must be received no later than 5:00 p.m., June 6, 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) 841-2323; 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, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.210.401 and 24.210.801 will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.210.666, 24.210.667, 24.210.674, 24.210.677, 24.210.834, 24.210.835, 24.210.840, and 24.210.843 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or e-mail to 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 April 28, 2014

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

In the matter of the amendment of ARM 37.34.3005 and 37.86.3607 pertaining to the update of developmental disabilities program home and community-based waiver and case management reimbursement	)))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 28, 2014, at 2:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 21, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.34.3005 REIMBURSEMENT FOR SERVICES OF MEDICAID FUNDED DEVELOPMENTAL DISABILITIES HOME AND COMMUNITY-BASED SERVICES (HCBS) WAIVER PROGRAMS (1) Reimbursement through the Developmental Disabilities Program's (DDP) Medicaid Home and Community-Based Services (HCBS) Waiver Programs is only available to a provider for services or items:

(a) through (c) remain the same.

(2) The department adopts and incorporates by this reference the rates of reimbursement for the delivery of services and items available through each Home and Community-Based Services Waiver Program as specified in ~~Section Two: Rates of Reimbursement for the HCBS 1915(c) 0208, 1037, 0667 Waiver Programs, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures~~ the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208, 1037, and 0667 Waiver Programs,

effective ~~July 1, 2013~~ July 1, 2014. A copy of ~~Section Two of~~ the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 and at http://www.dphhs.mt.gov/dsd/ddp/ddprateinformation.shtml.

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

37.86.3607 CASE MANAGEMENT SERVICES FOR PERSONS WITH DEVELOPMENTAL DISABILITIES, REIMBURSEMENT (1) Reimbursement for the delivery by provider entities of Medicaid funded targeted case management services to persons with developmental disabilities is provided as specified in ~~Section One, Rates of Reimbursement for the Provision of Developmental Disabilities Case Management Services for Persons with Developmental Disabilities 16 Years of Age or Older and for Children with Developmental Disabilities Residing in a Children's Community Home~~ the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~July 1, 2013~~ July 1, 2014~~, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures~~.

(2) The department adopts and incorporates by this reference ~~Section One, Rates of Reimbursement for the Provision of Developmental Disabilities Case Management Services for Persons with Developmental Disabilities 16 Years of Age or Older and for Children with Developmental Disabilities Residing in a Children's Community Home~~ the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are 16 Years of Age or Older or Who Reside in a Children's Community Home, dated ~~July 1, 2013~~ July 1, 2014~~, of the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures, and published by the department as the Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures, Section One, Rates of Reimbursement for the Provision of Developmental Disabilities Case Management Services for Persons with Developmental Disabilities 16 Years of Age or Older or Who Reside in a DD Children's Group Home~~. A copy of ~~Section One of~~ the manual may be obtained through the Department of Public Health and Human Services, Developmental Services Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210.

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

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to amend ARM 37.34.3005 and 37.86.3607. These two rules pertain to the reimbursement of services provided to persons who are recipients of developmental disabilities services funded by the State of Montana with Medicaid monies. These proposed amendments are necessary to increase the reimbursement rates to incorporate for state fiscal year (SFY) 2015 additional funding appropriated through House Bill 2 (HB2) of the 63rd Montana Legislature. This proposed amendment also is necessary to implement needed changes in the texts of the two manuals that are incorporated by reference in these rules.

ARM 37.34.3005

The proposed rule amendment is for the purposes of:

1. changing the title of the manual referenced within the rule to the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208, 1037, and 0667 Waiver Programs; and

2. incorporating into the rule this new edition of the manual, to be dated July 1, 2014, which includes changes in the rates of reimbursement and in certain textual provisions that are necessitated by additional legislative appropriations for the reimbursement of the Medicaid funded home and community services and by changes in the plan for the delivery of the Medicaid funded home and community services entered into between the federal Centers for Medicare and Medicaid Services (CMS).

ARM 37.86.3607

The proposed rule amendment is for the purposes of:

1. changing the title of the manual referenced within the rule to the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are16 Years of Age or Older or Who Reside in a Children's Community Home; and

2. incorporating into the rule this new edition of the manual, to be dated July 1, 2014, which includes a change in the rate of reimbursement that is necessitated by additional legislative appropriations for the reimbursement of the Medicaid funded case management services. This proposed change in reimbursement is only applicable to the provision of case management services that are contracted for by the department and is not applicable to the reimbursement of case management services delivered by state employees.

Textual changes in the proposed Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and

Community-Based Services (HCBS) 1915c 0208, 1037, and 0667 Waiver Programs, July 2014 edition include the following:

1. Existing language referencing pending approval of the Medicaid funded home and community waiver program, 1037, titled Supports for Community Working and Living, is to be modified to reference the waiver as approved since CMS has now approved the state's plan for that waiver.

2. The maximum payment rates per unit of service are to be modified in all the categories and subcategories of Table #1 of the manual, Service Reference Information & Clarification, Billable Units, and Reimbursement Rates, to account for the availability of the increased funding appropriated by the Legislature.

3. For categories of home and community services that are available as extensions beyond the coverage available for those categories of services as state plan services, adjustments in payment rates are to be made to provide that the extended services are reimbursed at the state plan rates anticipated for July 1, 2014.

4. The hourly units for the subcategories in "Supported Living Services" are to be modified to provide more flexibility. In addition, there are to be changes made that will further clarify the number of hours constituting monthly units for each subcategory.

5. An incorrect reference to transportation is to be removed from the Residential Training Supports Service subcategory for "Small agency/high geographic factor."

6. The billable monthly units for the "Follow Along Support" service category are to be further specified.

7. For the service "Small Group Employment Support," the only rate available for the service when delivered through an "Agency with Choice Self Directed Option" is to be the higher rate stated for the high geographic factor subcategory.

8. Based on advice given to the department by consultants, noting the unacceptability to CMS of percentage-based administrative fees, reference to percentage-based administrative fees are to be removed and actual fee rates are to be derived by the provider based on a methodology established by the provider for Individual Goods & Services, Assisted Living, Transportation, Environmental Modifications, Adaptive Equipment, PERS, Respite, and Live-In Caregiver services categories in both Table #1 of the manual, Service Reference Information & Clarification, Billable Units, and Reimbursement Rates, and Table #2 of the manual, Documentation Expectations By Service & Administrative Rule Reference/Authority. In addition, due to the use of actual fee rates for these services certain documentation requirements have been added to Table #2.

9. The administrative rule citations in Table #2 of the manual, Documentation Expectations by Service & Administrative Rule Reference/Authority, are to be modified to encompass the entire current set of rules adopted by the Developmental Disabilities Program.

Fiscal Impact of Proposed Rule Changes

The fiscal impact of the proposed changes to ARM 37.86.3005, implementing provider rate increases for DD providers will increase total expenditures to providers for state fiscal year 2015 by the sum of $4,050,116. These increased rates affect approximately 70 corporate providers of services.

The fiscal impact of the proposed change to ARM 37.86.3607, implementing provider rate increases for contracted providers of developmental disabilities case management services will increase total expenditures to those providers for state fiscal year 2015 by the sum of $166,043 in expenditures. These increased rates affect approximately four corporate providers of services.

Availability of the Texts for the Proposed Revised Manuals

The texts of the two proposed manuals' versions referenced in this notice, the Montana Developmental Disabilities Program Manual of Service Rates and Procedures of Reimbursement for Home and Community-Based Services (HCBS) 1915c 0208, 1037, and 0667 Waiver Programs, dated July 1, 2014 and the Montana Developmental Disabilities Program Manual of Service Reimbursement Rates and Procedures for Developmental Disabilities Case Management Services for Persons with Developmental Disabilities Who Are16 Years of Age or Older or Who Reside in a Children's Community Home, dated July 1, 2014, may be viewed via the following link: http://www.dphhs.mt.gov/dsd/ddp/ddprateinformation.shtml.

5. The department intends to adopt these rule amendments effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 5, 2014.

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

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

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

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

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

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

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

Certified to the Secretary of State April 28, 2014.

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

In the matter of the amendment of ARM 37.57.301, 37.57.304, 37.57.305, 37.57.306, 37.57.307, 37.57.308, 37.57.315, 37.57.316, 37.57.320, and 37.57.321 pertaining to newborn screening and follow-up of failed screenings	))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 28, 2014, at 11:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 21, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

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

(1) and (2) remain the same.

(3) "Newborn screening tests" are ~~laboratory~~ screening tests, procedures, or both for the following conditions:

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

(ii) Citrullinemia type 1;

(iii) and (iv) remain the same.

(v) Classic Phenylketonuria; and

(vi) through (e) remain the same.

(f) Primary ~~C~~congenital hypothyroidism;

(g) Cystic fibrosis; ~~and~~

(h) through (h)(ii) remain the same.

(iii) Hb SS disease~~.~~; and

(i) Critical congenital heart disease, including:

(i) hypoplastic left heart syndrome;
(ii) pulmonary atresia;
(iii) tetralogy of Fallot;
(iv) total anomalous pulmonary venous return;
(v) transposition of the great arteries;
(vi) tricuspid atresia; and
(vii) truncus arteriosus.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.304 ~~VERY LOW BIRTH WEIGHT (UNDER 1,500 GRAMS)~~ NEWBORNS HOSPITALIZED FOR NEONATAL INTENSIVE CARE (1) If a newborn is ~~of very low birth weight, i.e., under 1,500 grams~~ hospitalized for neonatal intensive care, a specimen of its blood must be taken for testing ~~after 24 hours of age~~ prior to nonrespiratory treatment and no later than ~~seven days~~ 48 hours of age, unless medically contraindicated, in which case the specimen must be taken as soon as the infant's medical condition permits.

(2) In the event that the initial screening blood specimen is taken at less than 24 hours of age, another screening specimen must be taken after 48 hours of age, and no later than 7 days of age.

~~(2)~~ (3) In the event that the newborn stays in a health care facility longer than ~~14~~ 7 days following birth, ~~a repeat congenital hypothyroid~~ an additional screening blood specimen must be ~~made~~ taken either at the time of discharge if the stay is less than one month, or at one month of age if the stay is one month or longer.

(4) Hospitals providing neonatal intensive care are responsible for developing and implementing a protocol to ensure a newborn hospitalized for neonatal intensive care receives screening for critical congenital heart disease.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.305 NEWBORNS OTHER THAN THOSE ~~WITH VERY LOW BIRTH WEIGHT~~ HOSPITALIZED FOR NEONATAL INTENSIVE CARE (1) For newborns ~~at birth weights of 1,500 grams or more~~ not requiring neonatal intensive care, the required blood specimen must be taken between 24 and ~~72~~ 48 hours of age.

(2) In the event the newborn is discharged from a health care facility prior to ~~the third day of life~~ 24 hours of age, the blood specimen must be taken immediately before discharge and, in addition~~, if the newborn is discharged before it is 24 hours old~~:

(a) another specimen must be taken and submitted to the department's laboratory between the ~~fourth~~ second and ~~14th~~ seventh day of the newborn's life; and

(b) the health care facility must:

(i) remains the same.

(ii) ensure that the parent or legal guardian of the newborn signs a statement assuming responsibility to cause a specimen to again be taken between the ~~fourth~~ second and ~~14th~~ seventh day of life of the newborn and to submit it to the department for testing.

~~(3) If taking a specimen on any of the dates cited in (1) and (2) is medically contraindicated, the specimen must be taken as soon as possible thereafter as the medical condition of the newborn permits.~~

(3) For newborns not requiring neonatal intensive care, a pulse oximetry screening for CCHD must be completed per the department's recommended protocol prior to discharge and after 24 hours of age and screening results reported to the department as required by this subchapter.

(4) In the event the newborn is discharged from a health care facility prior to 24 hours of age, pulse oximetry screening must be completed immediately before discharge and the health care facility must:

(a) provide education to the newborn's family on the implications of screening prior to 24 hours of age;

(b) provide information on the optimal timing of a repeat screening and a location where repeat screening can be done; and

(c) document (a) and (b) in the newborn's medical record.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.306 TRANSFER OF NEWBORN INFANT (1) In the event of transfer of a newborn from one health care facility to another, or from a place of birth that is not a health care facility to a health care facility, ~~the~~ a screening blood specimen ~~required~~ must be taken and submitted by the receiving health care facility ~~unless a sample was taken and submitted by the transferring health care facility or other responsible person~~.

(2) remains the same.

(3) In the event of a transfer of a newborn from one health care facility to another, or from a place of birth that is not a health care facility to a health care facility, pulse oximetry screening for CCHD must be completed after 24 hours of age by the receiving health care facility and screening results reported to the department as required by this subchapter.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.307 INFANT BORN OUTSIDE HEALTH CARE FACILITY (1) When an infant is born outside of a health care facility and is not subsequently transferred to a health care facility for initial newborn care, it is the responsibility of one of the persons designated in 50-15-221(4)(a), (b), and (c), MCA, in the order of priority indicated therein, to cause the blood specimen to be taken and submitted, and to cause pulse oximetry screening to be performed as required by this subchapter.

AUTH: 50-19-202, MCA

IMP: 50-19-203, MCA

37.57.308 NEWBORN EYE TREATMENT (1) A physician, nurse-midwife, or any other person who assists at the birth of any newborn must, within the time limit stated in (3) ~~below~~, instill or have instilled into each conjunctival sac of the newborn, ~~one of the following:~~

~~(a)~~ erythromycin (0.5%) ophthalmic ointment or drops from single-use tubes or ampules~~;~~

~~(b) tetracycline (1%) ophthalmic ointment or drops from single-use tubes or ampules; or~~

~~(c) silver nitrate solution (1%) in single-dose ampules~~.

(2) and (3) remain the same.

AUTH: 50-1-202, MCA
IMP: 50-1-202, MCA

37.57.315 TRANSFUSION: WHEN BLOOD SPECIMEN TAKEN (1) If a newborn needs a transfusion, blood specimens for the tests required by this subchapter must be taken before the transfusion takes place unless medically contraindicated.

(2) If the newborn is transfused prior to collection of the initial newborn screening specimen, a screening specimen must be taken 90 to 120 days after the last transfusion to screen for classical galactosemia and hemoglobinopathies. This specimen is in addition to those required elsewhere in this chapter.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.316 ~~ABNORMAL TEST RESULT~~ REPORTING SCREENING RESULTS (1) If ~~an initial test~~ screening results on an infant's blood specimen ~~is outside~~ are within the expected or normal range~~:~~

~~(a)~~ the department will report ~~that fact within 24 hours of test completion to the attending physician or midwife, or, if there is none or the physician or midwife is unknown, to the person who registered the infant's birth;~~ the results to the submitter of the specimen and, in addition, to the infant's healthcare provider(s) upon request.

~~(b) the person to whom the above report is made must ensure that within 48 hours of receiving the notification of an abnormal test result, a second blood specimen will be taken and submitted to the department for a second test.~~

(2) If the ~~second test result is outside the expected or normal range:~~ infant's blood specimen is of unsatisfactory quality for testing,

~~(a)~~ the department will ~~provide the test results within 24 hours of test completion to the same person to whom the initial results were reported;~~ notify the submitter of the need for collection of an additional specimen. The submitter must ensure collection of this specimen in a timely manner within three days of notification.

~~(b) that person must ensure that a serum specimen from the infant is immediately sent either to the department or to another approved laboratory qualified to perform quantitative analysis for the substance in question;~~

~~(c) if the specimen is sent to a laboratory other than the department's, the person who submits it must send the department a copy of the analysis report for the specimen within 24 hours after receiving the report.~~

(3) If screening results on an infant's blood specimen are outside the expected or normal range:

(a) the department will report results to the submitter of the specimen and to the healthcare provider(s) for the infant. Recommendations for follow-up actions contained in the report are determined by the department;

(b) the provider(s) will ensure that all repeat screening, confirmatory testing, or both, as recommended, is collected and submitted to the department or an approved laboratory within 48 hours or as clinically appropriate;

(c) if a referral to a contracted specialist is made by the department, the specialist will ensure that all confirmatory testing results and final diagnosis are reported to the department within one week of the determination of the final diagnosis.

~~(3)~~ (4) An approved laboratory for confirmatory testing following out-of-range blood screening results includes any state or territorial health department laboratory and any laboratory within their jurisdictions which is approved by them, a U.S. public health service laboratory, a laboratory operated by the U.S. Armed Forces or Veteran's Administration, a Canadian provincial public health laboratory, and any laboratory licensed under the provisions of the Clinical Laboratories Improvement Act of 1967, as amended.

(5) Each person in charge of any health care facility and each person responsible under ARM 37.57.307 for a birth occurring outside a health care facility must report to the department regarding pulse oximetry screening per department guidelines.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.320 RESPONSIBILITIES OF REGISTRAR OF BIRTH: ADMINISTRATOR OF HEALTH CARE FACILITY (1) Each person in charge of any health care facility and each person responsible under ARM 37.57.307 for a birth occurring outside a health care facility must:

(a) remains the same.

(b) be certain~~, prior to the discharge of the newborn,~~ that the specimen to be forwarded to the laboratory is adequate for testing purposes;

(c) within 24 hours after the taking of the specimen, cause such specimen to be forwarded to the department's laboratory by either courier or first-class mail or its equivalent; ~~and~~

(d) record ~~on the newborn's chart or file~~ in the newborn's medical record the date of taking of the test specimen and the results of the tests performed when reported by the department~~.~~;

(e) ensure that pulse oximetry is performed per the department's recommended protocol for the purpose of performing newborn screening for CCHD as follows:

(i) ensure that the screening is performed on equipment that has been approved by the FDA for use on newborns and is motion tolerant;

(ii) ensure that screening is performed by licensed staff who have been trained on the screening procedure and protocol;

(iii) record in the newborn's medical record the date, time, and screening results;

(iv) ensure that the pulse oximetry screening results are reported to DPHHS as required by this subchapter;

(v) ensure that a policy and procedure is in place for immediate follow-up of a failed CCHD screen; and

(f) use educational materials provided by the department and must provide education to the newborn's family on the following:

(i) the conditions that may be detected through bloodspot screening and pulse oximetry screening;

(ii) the importance of newborn screening tests to detect potentially life-threatening conditions;

(iii) the process for collecting bloodspot screening and conducting pulse oximetry screening; and

(iv) after hearing all the benefits of newborn screening and the risks involved in refusing testing, a parent/legal guardian may refuse either of the above screenings. In that case, the parent/legal guardian must sign a waiver for the newborn's medical record in which they accept responsibility for adverse consequences. A copy of this waiver must be provided to the department.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

37.57.321 STATE LABORATORY~~: RESPONSIBILITY FOR TESTS~~

(1) Only those newborn screening blood tests performed by the department laboratory or~~, in the case described in ARM 37.57.316,~~ a laboratory approved by the department~~,~~ meet the requirements of 50-19-201, 50-19-202, 50-19-203, and 50-19-204, MCA.

(2) Dried blood specimens remaining after newborn screening test completion are the property of the department laboratory and will be stored for one calendar year prior to destruction. Any dried blood specimens sent to a laboratory approved by the department for testing will be destroyed after one year by the approved laboratory. An exception is made for screening specimens with results that are out of range which may be kept for quality improvement and new method development within the laboratory. These specimens may be stored by the laboratory for an indefinite period of time.

AUTH: 50-19-202, MCA
IMP: 50-19-203, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.57.301, 37.57.304, 37.57.305, 37.57.306, 37.57.307, 37.57.308, 37.57.315, 37.57.316, 37.57.320, and 37.57.321 regarding newborn screening and follow-up.

These changes are necessary to conform to the federal Health Resources and Services Administration's (HRSA) "Recommended Uniform Screening Panel" for all newborns, to update newborn eye prophylaxis to reflect current standards of care, and to update newborn bloodspot screening procedures and protocols to reflect current standards of care.

ARM 37.57.301

The department is proposing changes to the list of definitions for infant screening tests. The definition of "newborn screening tests" has been updated so that it is more reflective of the different types of newborn screening being performed. Changes to "Citrullinemia type I," "Classic Phenylketonuria," and "Primary Congenital hypothyroidism" have been made to reflect current medical terminology. "Critical Congenital Heart Disease" (CCHD) is a new entry. These changes are necessary to keep the list of definitions current and reflective of HRSA's Recommended Uniform Screening Panel for all newborns.

ARM 37.57.304

The department is proposing changes for the screening of newborns hospitalized for neonatal intensive care. These changes update bloodspot screening protocol to reflect current standards of care and add language requiring screening for CCHD. These changes are necessary to provide the most current and accurate information to providers and to the department.

ARM 37.57.305

The department is proposing changes for the screening of newborns who are not hospitalized for neonatal intensive care. These changes update the bloodspot screening protocol to reflect current standards of care and add language requiring CCHD screening. The protocol for CCHD screening recommended by the department is the screening protocol recommended by the American Academy of Pediatrics, the American Heart Association, the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, and The American College of Cardiology Foundation. These changes are necessary to provide the most current and accurate information to providers and to the department.

ARM 37.57.306

The department is proposing changes for the screening of newborns who are transferred to a health care facility. These changes clarify the requirement of a receiving facility for taking a blood specimen in order to eliminate confusion. Language is also added requiring the receiving facility to perform CCHD screening per the recommended protocol and to report screening results to the department. These changes are necessary to clarify who is responsible for screening in the event of a newborn transfer.

ARM 37.57.307

The department is proposing changes for the screening of an infant born outside of a health care facility. These changes add language requiring screening for CCHD and are necessary to conform to HRSA's Recommended Uniform Screening Panel for all newborns.

ARM 37.57.308

The department is proposing changes to newborn eye treatment. Language describing medications to be used has been taken out due to these preparations no longer being available in the United States for newborn eye prophylaxis. These changes are necessary to reflect current standards of care.

ARM 37.57.315

The department is proposing changes for bloodspot screening of newborns who require a transfusion. These changes are necessary to reflect current standards of care and to provide the most current and accurate information to providers.

ARM 37.57.316

The department is proposing changes for the reporting of newborn screening results. Language is added to further clarify reporting, testing, and/or specimen submission requirements when an in-range or out-of-range screening result is obtained or when a blood specimen is of unsatisfactory quality for testing. Additionally, language is added to require reporting of CCHD screening results to the department. This information is necessary for the department to conduct quality assurance, surveillance, and technical assistance for CCHD screening.

ARM 37.57.320

The department is proposing changes to the responsibility of the registrar of birth. Language is added to clarify how bloodspot specimens are to be forwarded to the department laboratory and how bloodspot screening is to be recorded. These changes are necessary to ensure timely collection and submission of newborn blood specimens and accurate reporting of results.

Language is also added to include screening for CCHD with adequate equipment by trained staff. Recording of screening results in the newborn's medical record as well as reporting results to the department are also added. These additions are necessary to conform to HRSA's Recommended Uniform Screening Panel for all newborns and to ensure that screening is conducted in a manner which will reduce the potential for screening error.

Language is added to clarify the newborn screening education that is to be provided to families as well as the procedure for refusal of screening. These changes are necessary to provide the most complete and accurate information to families, providers, and the department.

ARM 37.57.321

The department is proposing changes to the responsibilities of the state laboratory. The proposed changes clarify the retention, use, and destruction/disposal of blood specimens submitted to the laboratory for the purpose of newborn screening. These changes are necessary to provide accurate information to families, providers, and the department.

Fiscal Impact

The adoption of the proposed amendments to the administrative rules listed above could have a fiscal impact on the following groups in Montana: newborns and their families, birthing hospitals, birthing centers, and small businesses providing direct-entry midwifery services.

Impact to birthing hospitals, birthing centers, and small businesses providing direct-entry midwifery services in Montana: There are currently 28 birthing hospitals in Montana. The proposed changes to newborn eye prophylaxis and to newborn bloodspot screening are not expected to have a fiscal impact on these businesses. Estimated costs that may be incurred to perform newborn screening for critical congenital heart disease include the following items.

1. The purchase of adequate screening equipment equals $500-$2,000.

2. The cost of screening procedure and time is estimated to be about $13.50 per newborn including staff time and the screening probe. This cost is reduced if reusable screening equipment is used. The estimated time to complete the screening is ten minutes.

3. The cost of education and training of staff on the screening procedure and protocol includes staff wages and time. The amount of time necessary to become proficient at screening with the protocol will vary with the individual and therefore is difficult to estimate. Many free educational resources are available online and some training may also be provided by the department.

Other Fiscal Considerations

Recording of screening results and reporting to the department recording screening results in the newborn's medical record may require additional staff time depending on the business' current recording practices. Reporting screening results to the department will be in a manner consistent with newborn hearing screening reporting to minimize the staff time required for reporting.

Family education materials will be provided by the department.

Currently there is not a billable current procedural terminology (CPT) code for critical congenital heart disease screening so the cost of screening cannot be directly reimbursed by health payors like Medicaid, insurance, etc. However, Center for Disease Control (CDC) researchers found that screening for CCHD is cost-effective because of the reduction in hospitalization costs associated with late detected CCHD and the potential reduction in deaths.

Number of Persons Affected

There are approximately 12,000 babies born in Montana every year. The proposed changes to newborn eye prophylaxis and newborn bloodspot screening are not expected to have a fiscal impact on these babies. Because there is not currently a billable CPT code for critical congenital heart disease screening that can be directly reimbursed by payors, it is possible that the hospitals and providers will bill families for costs associated with this screening.

5. The department intends to adopt these rule amendments effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 5, 2014.

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

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

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

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

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will significantly and directly impact small businesses.

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

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

Certified to the Secretary of State April 28, 2014.

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

In the matter of the amendment of ARM 37.86.2801, 37.86.2806, 37.86.2820, 37.86.2901, 37.86.2902, 37.86.3001, 37.86.3009, 37.86.3020, 37.86.3101, 37.86.3103, 37.86.3105 pertaining to Medicaid outpatient and inpatient hospital services	)))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 28, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 21, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) through (6)(d) remain the same.

(7) Medicaid reimbursement for early elective delivery and nonmedically necessary cesarean sections will not be made unless the hospital submitting the claim meets the following requirements:

(a) Effective July 1, 2014, a hospital submitting claims for deliveries must have a hard stop policy regarding early elective deliveries and nonmedically necessary cesarean sections that complies with the requirements in ARM 37.86.2902(9).

(b) Effective October 1, 2014, hospital claims for inductions and cesarean sections must meet the following coding requirements:

(i) ICD-10 inpatient procedure codes must be used on all inpatient hospital claims; and

(ii) claims for inductions or cesarean sections must have one of the following condition codes:

(A) Condition Code 81–cesarean section or induction performed at less than 30 weeks for medical necessity;

(B) Condition Code 82–cesarean section or induction performed at less than 39 weeks gestation elective; or

(C) Condition Code 83–cesarean section or induction performed at 39 weeks gestation or greater.

(iii) The department will begin accepting these coding changes as of July 1, 2014.

(c) Beginning October 1, 2014, the department will reduce reimbursement to hospitals that perform early elective inductions or cesarean sections prior to 39 weeks and 0/7 days gestation, or nonmedically necessary cesarean sections at any gestation:

(i) a 33% reduction in PPS reimbursement; or

(ii) cost-based hospital interim reimbursement will be reduced 33% and the total claim payment will not be eligible for final reimbursement through cost settlement as provided in ARM 37.86.2806.

(8) All hospitals must use current ICD procedure codes for both inpatient and outpatient claims, including Medicare crossover claims.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2806 COST-BASED HOSPITAL, GENERAL REIMBURSEMENT

(1) through (7) remain the same.

(8) Cost-based hospital claims that do not meet the requirements of the elective deliveries policy as provided in ARM 37.86.2801, will be subject to a 33% reduction in interim reimbursement based on the total claim payment and will not be eligible for final reimbursement through cost settlement.

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

37.86.2820 DESK REVIEWS, OVERPAYMENTS, AND UNDERPAYMENTS

(1) through (3) remain the same.

(4) When the upper payment limit has been exceeded based on filed cost reports the department will recover the overpayment amount. The department will collect overpayments using the following methodology:

(a) the costs of all facilities that are over the upper payment limit will be divided by the total amount to be collected; and

(b) the percentage in (a) will be multiplied by each facility's total costs to determine the recoverable amount.

(4) remains the same, but is renumbered (5).

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA
IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS (1) through (19) remain the same.

(20) "Early elective delivery" means either a nonmedically necessary labor induction or cesarean section that is performed prior to 39 weeks and 0/7 days gestation.

(20) through (44) remain the same, but are renumbered (21) through (45).

(46) "Upper payment limit" means a federal limit placed on fee-for-service reimbursement of Medicaid providers.

(45) remains the same, but is renumbered (47).

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2902 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) through (8) remain the same.

(9) Effective July 1, 2014, all hospitals that perform deliveries must have a hard stop policy regarding early elective deliveries and nonmedically necessary cesarean sections. The policy must have the following parts:

(a) no nonmedically necessary inductions or cesarean sections prior to 39 weeks and 0/7 days gestation, and no nonmedically necessary cesarean sections at any gestation;

(b) confirmation of weeks gestation must be determined by the American Congress of Obstetricians and Gynecologists guidelines. At least one of the following guidelines must be met:

(i) fetal heart tones must have been documented for 20 weeks by nonelectronic fetoscope or 30 weeks by doppler;

(ii) 36 weeks since a positive serum or urine pregnancy test that was performed by a reliable laboratory; or

(iii) an ultrasound prior to 20 weeks gestation that confirms the gestational age of at least 39 weeks; and

(c) a multistep review process prior to all inductions and cesarean sections, including a requirement that the final decision be made by the perinatology chair/obstetrical chair, OB director, or medical director.

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

37.86.3001 OUTPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) through (7) remain the same.

(8) "Early elective delivery" means either a nonmedically necessary labor induction or cesarean section that is performed prior to 39 weeks and 0/7 days gestation.

(8) through (16) remain the same, but are renumbered (9) through (17).

~~(17)~~ (18) "Provider-based entity" means a provider that is either created by, or acquired by, a main provider for purposes of furnishing health care services under the name, ownership, and administrative and financial control of the main provider as in 42 CFR 413.65. Both professional and facility (hospital outpatient department)

providers are included together under this definition. For purposes of provider-based entity billing, a professional is a physician, podiatrist, mid-level, licensed clinical social worker, licensed professional counselor, or a licensed psychologist.

(18) remains the same, but is renumbered (19).

~~(19) For purposes of provider based entity billing, a professional is a physician, podiatrist, mid-level, licensed clinical social worker, licensed professional counselor, or a licensed psychologist.~~

(20) "Upper payment limit" means the federal limit placed on fee-for-service reimbursement of Medicaid providers.

(20) remains the same, but is renumbered (21).

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

37.86.3009 OUTPATIENT HOSPITAL SERVICES, PAYMENT METHODOLOGY, EMERGENCY VISIT SERVICES (1) For emergency visits that are not provided by exempt hospitals or critical access hospitals as defined in ARM 37.86.2901, reimbursement will be based on the ambulatory payment classifications APC methodology in ARM 37.86.3020, except emergency room visits with CPT codes 99281 and 99282 will be reimbursed based on the ~~lowest level~~ clinical APC weight.

(a) and (2) remain the same.

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

37.86.3020 OUTPATIENT HOSPITAL SERVICES, OUTPATIENT PROSPECTIVE PAYMENT SYSTEM (OPPS) METHODOLOGY, AMBULATORY PAYMENT CLASSIFICATION (1) through (1)(f) remain the same.

(i) The diagnosis used to define a potential obstetric qualification will be taken from diagnosis-related groups ~~382~~ 565 (false labor) and ~~383~~ 566 (other antepartum diagnosis with medical complications).

(ii) through (2) remain the same.

(3) All outpatient hospitals including birthing centers are subject to the requirements in ARM 37.86.2801(9).

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

37.86.3101 OUTPATIENT HOSPITAL SERVICES, CARDIAC AND PULMONARY REHABILITATION SERVICES (1) and (2) remain the same.

(3) The following conditions are contraindications to cardiac or pulmonary rehabilitation, and except as provided in ARM 37.86.3107, patients with one or more contraindications are not eligible for cardiac or pulmonary rehabilitation:

(a) remains the same.

(b) significant or unstable medical conditions including, but not limited to, substance abuse, liver dysfunction, kidney dysfunction, and ~~metastic~~ metastatic cancer.

AUTH: 53-2-201, 53-6-111, MCA
IMP: 53-2-201, 53-6-101, MCA

37.86.3103 OUTPATIENT HOSPITAL SERVICES, CARDIAC REHABILITATION SERVICES (1) Cardiac rehabilitation services are limited to ~~the following:~~

~~(a) Up to three visits per week for eight weeks, limited to the following cardiac events and diagnoses eligible for cardiac rehabilitation benefits~~ a maximum of two 1-hour sessions per day for up to 36 sessions, limited to the following cardiac events and diagnoses:

~~(i)~~ (a) myocardial infarction within the preceding 12 months;

~~(ii)~~ (b) coronary ~~angioplasty~~ artery bypass surgery;

~~(iii)~~ (c) heart-lung transplant;

~~(iv)~~ (d) ~~valvular surgery~~ current stable angina pectoris;

~~(v)~~ (e) ~~congestive heart failure~~ percutaneous transluminal coronary angioplasty (PTCA) or coronary stenting; and

~~(vi)~~ (f) ~~heart-lung transplant~~ heart valve repair or replacement.

~~(b) Services are limited to Phase I cardiac rehabilitation provided in the hospital immediately following the cardiac event or diagnosis, and, after hospital discharge, Phase II services if they are initiated within four months of the event or diagnosis and require EKG monitoring with a medical doctor present in the same building.~~

AUTH: 53-2-201, 53-6-111, MCA
IMP: 53-2-201, 53-6-101, MCA

37.86.3105 OUTPATIENT HOSPITAL SERVICES, PULMONARY REHABILITATION SERVICES (1) Pulmonary rehabilitation services are limited to ~~the following:~~

~~(a)~~ a maximum of ~~36 hours over a period not less than two weeks and not more than six weeks, limited to one of the following diagnoses:~~ two 1-hour sessions per day for up to 36 sessions, for patients with moderate to severe COPD (defined as GOLD classification II, III, and IV).

~~(i) persistent asthma;~~

~~(ii) emphysema;~~

~~(iii) chronic bronchitis;~~

~~(iv) bronchiectasis;~~

~~(v) interstitial lung disease; and~~

~~(vi) chronic airway obstruction.~~

(2) and (3) remain the same.

AUTH: 53-2-201, 53-6-111, MCA
IMP: 53-2-201, 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

Elective Deliveries

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.2801, 37.86.2806, 37.86.2901, 37.86.2902, 37.86.3001, and 37.86.3020 pertaining to early elective inductions and cesarean sections, and nonmedically necessary cesarean sections.

These proposed amendments are necessary to define these elective deliveries and set the guidelines for reimbursement changes that will protect the maternal child health of persons eligible for Montana Medicaid benefits.

Montana Medicaid currently pays for approximately 37% of all births in Montana; of these births, 25% are induced and 30% are cesarean sections. The American Congress of Obstetricians and Gynecologists (ACOG), the National Quality Forum, the Leapfrog Group, the March of Dimes, and the Joint Commission have identified the reduction of early deliveries as a key quality indicator for maternal child health.

Elective inductions, cesarean sections, and early deliveries all increase the risks to both mother and infant, and there is no evidence that they confer any health benefits in the absence of medical necessity. These deliveries also increase the average hospital stay and costs for both mother and infant. Montana Medicaid, as the payer of more than one-third of the births in Montana, is in a key position to contribute to the reduction of elective early deliveries.

The policy will be implemented in three steps:

July 1, 2014, all facilities enrolled in Montana Medicaid who perform deliveries must have a "hard stop" elective delivery policy in place. The policy requires specific guidelines be met prior to any induction or cesarean section.

July 1, 2014, the department will begin a soft rollout of required coding changes, allowing the department to provide information and support to those providers who are not in compliance with the guidelines. Coding changes must be implemented no later than October 1, 2014.

October 1, 2014, a reimbursement reduction of 33% for facilities on all claims that are submitted that are determined by the department to be an elective delivery.

The following describes the proposed rule amendments pertaining to elective deliveries under hospital services:

ARM 37.86.2801

In (7) the department is proposing to add new policy information regarding the Elective Delivery Policy. The policy will require all hospitals to have a no early elective induction/cesarean section policy by July 1, 2014. Beginning October 1, 2014, hospitals will receive a 33% payment reduction, and physicians a 12% reduction on nonmedically necessary inductions prior to 39 weeks gestation, and nonmedically necessary cesarean sections at any gestation.

In (8) the department is proposing to add language requiring current International Statistical Classification of Diseases and Related Health Problems (ICD) procedure codes for inpatient and outpatient claims, including Medicare cross-over claims.

ARM 37.86.2806

In (8) the department is proposing to add language stating that cost-based hospital claims that have been reduced due to the elective delivery policy will not be eligible for cost settlement.

ARM 37.86.2901

In (20) the department is proposing to add a new definition of early elective delivery and adjust numbering throughout the rule.

ARM 37.86.2902

In (9) the department is proposing to add language regarding policies that hospitals must have by July 1, 2014, regarding early elective deliveries and to define specific requirements of the policies.

ARM 37.86.3001

In (8) the department is proposing to add a new definition of early elective delivery and numbering will be adjusted throughout the rest of the rule.

ARM 37.86.3020

In (3) the department is proposing to add language noting that birth centers are included in the early elective delivery policy and refer back to ARM 37.86.2801.

Outpatient Cardiac/Pulmonary Rehabilitation Services

The department is proposing amendments ARM 37.86.3101, 37.86.3103, and 37.86.3105 pertaining to outpatient cardiac/pulmonary rehabilitation services. The changes to these rules are necessary to comply with the Centers for Medicare and Medicaid Services (CMS) guidelines for these services.

In 2010, the CMS updated the guidelines for outpatient cardiac/pulmonary rehabilitation services. The update changed the maximum number of sessions and

redefined the diagnoses that are eligible for these services. The department did not update their rules at that time.

The previous guidelines required that all treatments be completed within eight weeks for cardiac rehab, and six weeks for pulmonary rehab. These timelines have been removed and both now allow 36 sessions with a maximum of two 1-hour sessions per day. The previous guidelines also allowed for multiple different diagnoses for pulmonary rehab; CMS has updated this to just moderate to severe chronic obstructive pulmonary disease.

The following describes the purpose and necessity of the proposed rule amendments pertaining to outpatient cardiac/pulmonary rehabilitation services under hospital services:

ARM 37.86.3101

In (3) the department is proposing to correct a spelling error from "metastic" to "metastatic cancer."

ARM 37.86.3103

In (1) the department is proposing to update this rule to be in compliance with CMS rules in 2010 cardiac rehabilitation.

ARM 37.86.3105

In (1) the department is proposing to update this rule to be in compliance with CMS rules in 2010 cardiac rehabilitation.

Upper Payment Limit and Methodology for Collection of Any Overages

The department is proposing amendments to ARM 37.86.2820, 37.86.2901, and 37.86.3001, pertaining to inpatient and outpatient services. The above rules pertain to the upper payment limit and methodology for collection of any overages.

The following describes the proposed rule amendments pertaining to the upper payment limit:

ARM 37.86.2820

In (4), the department is proposing to add language pertaining to the methodology for collecting overpayments when the upper payment limit is exceeded. The upper payment limit is a limit put in place through federal regulation. The department currently does not have language in rule defining how overpayments will be collected. This new language will put in place the methodology for how any overpayments of the upper payment limit will be collected.

ARM 37.86.2901

In (46), the department is proposing to add a new definition of "Upper Payment Limit." The upper payment limit is a limit put in place through federal regulation. The department currently does not have this as a definition, and is also updating ARM 37.86.2820 to include the methodology for collecting overpayments when the upper payment limit is exceeded.

ARM 37.86.3001

The department is proposing to add a new definition of "Upper Payment Limit." The upper payment limit is a limit put in place through federal regulation. The department currently does not have this as a definition, and is also updating ARM 37.86.2820 to include the methodology for collecting overpayments when the upper payment limit is exceeded.

Obstetric Observation

The department is proposing amendments to ARM 37.86.3020 pertaining to inpatient services regarding obstetric observation.

The current language in ARM 37.86.3020(1)(f)(i) regarding obstetric observation qualifying diagnosis-related groups has been updated to new numbers since the original completion of this rule. The descriptions of these diagnosis-related groups have not been changed. The related number is the only item that changed.

The following describes the proposed rule amendments pertaining to obstetric observation:

ARM 37.86.3020

The department is proposing to change the diagnosis-related group number from 382 to 565. The diagnosis-related group number currently listed is no longer accurate.

Provider-Based Entity

The department is proposing amendments to ARM 37.86.3001 pertaining to outpatient services regarding provider-based entities.

"Provider-based entity" is defined in ARM 37.86.3001 in (17), and a provider-based professional is defined in (19). The department is proposing to combine these two definitions into one as together they are a full definition of a provider-based entity.

The following describes the proposed rule amendment pertaining to provider-based entities:

ARM 37.86.3001

The department is also proposing to move (19) to (17).

Moving (19) to (17) combines the two provider-based definitions into one definition, making both definitions complete.

Emergency Room Visit Reimbursement

The department is proposing amendments to ARM 37.86.3009 pertaining to outpatient services regarding emergency room reimbursement.

The following describes the proposed rule amendment pertaining to emergency room visit reimbursement:

ARM 37.86.3009

The department is proposing to remove the term "lowest level." As of January 1, 2014 the department has gone to a single level facility Ambulatory Payment Classification (APC) weight; therefore, there is no longer a lowest level APC weight.

Fiscal Impact

The changes to the above rules will have no fiscal impact.

5. The department intends to adopt these rule amendments effective July 1, 2014.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., June 5, 2014.

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

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

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

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

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

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

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

Certified to the Secretary of State April 28, 2014

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.2.503 and the repeal of ARM 8.2.504 pertaining to the administration of the Quality Schools Grant Program	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On March 27, 2014, the Department of Commerce published MAR Notice No. 8-2-124 pertaining to the proposed amendment and repeal of the above-stated rules at page 537 of the 2014 Montana Administrative Register, Issue Number 6.

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

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

COMMENT #1: The draft project grant documents make no reference to the planning grant process. Is there any anticipation of either amending the planning grant process or eliminating the planning grant process?

RESPONSE #1: The department proposed to repeal the rule for the administration of the Quality Schools Grant Program – Planning Grants because ARM 8.2.504 has been replaced in its entirety by ARM 8.2.501. The current administration of the Quality Schools Planning Grants is under ARM 8.2.501, which is still in effect. In the event any changes are to occur with respect to the Quality Schools Planning Grants, the department will follow the ARM process.

COMMENT #2: The application date of June 26, 2014 will be difficult to meet due to the award date of Quality Schools Planning Grants late last fall. Many of the schools that I am working with will be wrapping up the important planning efforts in May and June. It would be helpful to have the month of July to prepare Quality Schools Project Grant applications.

RESPONSE #2: The department provides technical assistance to applicants who are completing applications in order to submit a proposal on the proposed June 26, 2014 deadline. Additionally, the statutory attributes primarily focus on the attributes of the school and its facilities such as long term planning, school characteristics, and financial situation which can be responded to without the proposed project planning document. The proposed deadline allows the department a minimum amount of time to review the numerous applications (66 applications from the previous application

cycle) and provide funding recommendations to be considered during the 2015 legislative session.

COMMENT #3: It would be helpful to clarify that school districts may (at their own risk) proceed with the design and bidding of their project in advance of potential legislative approval in April 2015. Some schools may proceed with design upon release of the Governor's budget in November 2014; other schools may wait for confirmation in a legislative committee. This would allow projects to be bid during the optimal time frame of January-March 2015, with contractor mobilization in the spring and maximum construction impacts taking place during the summer of 2015. In addition to the 8-10% savings typically achieved by projects bid in January versus June, school districts and the Quality Schools program would save an additional 3% per year due to inflation savings associated with bidding a project in January of 2015 versus January of 2016, allowing more schools to participate in the program.

RESPONSE #3: The department does not restrict school districts from completing design or procuring construction bids in advance of the legislative process; however, all Quality Schools applicants should be aware that the Quality Schools program cannot reimburse any cost incurred prior to the award of grant funds. Any costs incurred prior to the date the bill has been signed by the Governor awarding funding would be the sole responsibility of the applicant and could not be reimbursed with Quality Schools funding.

COMMENT #4: I understand the legislature prioritized repairs to existing facilities over new construction; however, the planning processes that I facilitate occasionally identify the replacement of an existing building as the wisest use of the available resources. I would hope that the Quality Schools staff would have discretion to recommend a project that includes expanding or replacing existing buildings if the comprehensive planning process resulted in such a recommendation.

RESPONSE #4: The department reviews and provides funding recommendations based on the statutory priorities and statutory attributes, which does mirror the intent of the Legislature and has established priority for projects that present repair over new construction. All applications receive a ranked score for each statutory priority and statutory attribute based on the information that is presented in the application responses and supporting documentation.

COMMENT #5: The current wording of Priority #1 links safety to state or federal standards. Many schools have prioritized making safety improvements to address armed intruders, but such improvements are not included in state or federal standards. In some cases the improvements might be fairly simple to achieve– relocating a receptionist to a location that allows observation of each visitor, retaining the visitor in a secure waiting area and providing additional security through electronically controlled doors in order to contain sub-zones of the school. All told, such a solution might represent $50,000-$75,000 of improvements, and barely warrant a grant application. But for districts with 5, 10 or 20 schools, meeting those needs on a comprehensive level might be substantial. It would be helpful for such

projects to be considered a single project, implemented in multiple locations, and submitted under priority #1.

RESPONSE #5: The department will consider an application for work in more than one school building within the district. The work described in the application, though occurring in multiple buildings, must all be substantially related and all meet the applicable statutory priority. Statutory Priority #1 follows 90-6-811(1)(a), MCA, which states the first priority will be "projects that solve urgent and serious public health or safety problems or that enable public school districts to meet state or federal health or safety standards." A district may apply for a grant which can demonstrate that the project solves an urgent and serious public health or safety problem.

COMMENT #6: The inclusion of deferred maintenance is an important clarification to Priority #2. Some of the school districts that I have worked with have accumulated a substantial back-log of deferred maintenance, and will benefit from the potential of requesting Priority #2 funding. Deferred maintenance is difficult to fund at a local level, and is often only completed through grant funding.

RESPONSE #6: The department will continue to consider funding requests for deferred maintenance projects, proposed in these application guidelines under Statutory Priority #2.

COMMENT #7: It would be helpful to graphically illustrate which portions of the guidelines and application are being modified as a part of the public comment process.

RESPONSE #7: The department has posted the proposed guidelines and does maintain previous versions of the guidelines on the web site to allow the public to review and compare all information.

/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 April 28, 2014.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.99.511 pertaining to the Microbusiness Finance Program	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 27, 2013, the Department of Commerce published MAR Notice No. 8-99-118 pertaining to the proposed amendment of the above-stated rule at page 2209 of the 2013 Montana Administrative Register, Issue Number 22.

2. The department has amended the above-stated rule 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 April 28, 2014.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 8.119.101 pertaining to the Tourism Advisory Council	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 27, 2014, the Department of Commerce published MAR Notice No. 8-119-123 pertaining to the proposed amendment of the above-stated rule at page 540 of the 2014 Montana Administrative Register, Issue Number 6.

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

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

COMMENT #1: A comment was received stating that CVB is not defined in the rule as written. Including a definition or spelling out would make the rule clearer for non-MT tourism folk.

RESPONSE #1: "Non-profit convention and visitors bureau" is defined in 15-65-101(5), MCA, and means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located. For convenience it is commonly referred to as CVB.

/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 April 28, 2014.

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

In the matter of the adoption of a temporary emergency rule pertaining to the Shed's Bridge Fishing Access Site in Gallatin County	))))	NOTICE OF ADOPTION OF TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) is adopting the following emergency rule due to danger located within the Shed's Bridge Fishing Access Site (FAS). Spring runoff within the Gallatin River has caused the west bank of the FAS to actively slough off into the river. This process has left a hazardous twelve-foot drop-off and the ground near the drop-off is unstable. People anywhere near the area may be caught in the slough and buried by the soil or swept down the river unexpectedly.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 23, 2014, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; or e-mail jesssnyder@mt.gov.

3. The temporary emergency rule is effective April 25, 2014, when this rule notice is filed with the Secretary of State.

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

NEW RULE I SHED'S BRIDGE FISHING ACCESS SITE TEMPORARY EMERGENCY CLOSURE (1) Shed's Bridge Fishing Access Site is located in Gallatin County.

(2) Shed's Bridge Fishing Access Site is closed to all public occupation.

AUTH: 2-4-303, 23-1-106, 87-1-301, MCA
IMP: 2-4-303, 23-1-106, 87-1-301, MCA

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

6. Concerned persons are encouraged to submit their comments to the department. They should submit their comments along with their names and addresses to Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59720; fax (406) 444-7456; or e-mail jesssnyder@mt.gov. Any comments must be received no later than June 13, 2014.

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

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

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

/s/ Mike Volesky
Mike Volesky
Chief of Staff
Department of Fish, Wildlife and Parks

/s/ Aimee Fausser
Aimee Fausser
Rule Reviewer

Certified to the Secretary of State April 25, 2014.

BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 18.9.701 and the repeal of ARM 18.9.702 pertaining to Motor Fuels tax	))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On March 13, 2014, the Department of Transportation published MAR Notice No. 18-146 pertaining to the proposed amendment and repeal of the above-stated rules at page 440 of the 2014 Montana Administrative Register, Issue Number 5.

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

3. No comments or testimony were received.

/s/ Carol Grell Morris
Carol Grell Morris
Rule Reviewer

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

Certified to the Secretary of State April 28, 2014.

BEFORE THE BOARD OF PERSONNEL APPEALS
DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 24.26.697 and the adoption of NEW RULE I pertaining to the stay of an informal investigation	))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On November 14, 2013, the Board of Personnel Appeals (board) published MAR Notice No. 24-26-279 pertaining to the public hearing on the proposed amendment and adoption of the above-stated rules at page 2030 of the 2013 Montana Administrative Register, Issue Number 21.

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

COMMENT 1: The board received one comment expressing concern that the ability of the investigator to stay proceedings and refer the matter to arbitration could delay the normally quick unfair labor practice process, or that time limits to file grievances may have lapsed while awaiting response on the unfair labor practice charge.

RESPONSE 1: Arbitration is designed to be a quick, efficient, and cost effective solution to labor disputes and has been the favored resolution process in labor matters for decades. The board believes that further encouraging the use of arbitration will not cause any problems as it relates to time limits.

COMMENT 2: The board received one comment that it lacked the authority to change the statutory definition of a grievance.

RESPONSE 2: The board is not changing the definition of a grievance. The board is reducing the administrative burden by encouraging arbitration, as has been the case in the federal system for some time, in appropriate situations. This change is consistent with the board's authority to promulgate rules necessary to carry out Montana's collective bargaining statutes.

COMMENT 3: The board received one comment that suggested a revision to the amendment. The suggested revision was to separate the conditions of board-initiated factfinding and party-initiated factfinding in ARM 24.26.697(8).

RESPONSE 3: The board adopts the suggested revision because it adds clarity to the rule without making any substantive alterations. The requirement for splitting the cost of factfinding is specified in 39-31-309, MCA.

3. The board has amended ARM 24.26.697 with the following changes, stricken matter interlined, new matter underlined:

24.26.697 FACT FINDER (1) through (7) remain as proposed.

(8) When a party petitions the board to initiate factfinding, the cost of factfinding must be equally borne by the parties. The fact finder shall, within ten working days of the written findings, send a copy of the invoice to both parties on which they will be billed for one-half of the total. The parties shall pay directly to the fact finder within five days.

(8) remains as proposed, but is renumbered (9).

4. The board has adopted NEW RULE I (ARM 24.26.680A) as proposed.

BOARD OF PERSONNEL APPEALS
ANNE L. MACINTYRE, CHAIRPERSON

/s/ Mark Cadwallader
Mark Cadwallader
Alternate Rule Reviewer

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

Certified to the Secretary of State April 28, 2014.

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

In the matter of the amendment of ARM 24.101.413 renewal notification and the adoption of NEW RULE I military training or experience	))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On February 27, 2014, the Department of Labor and Industry (department) and the State Electrical Board (board) published MAR Notice No. 24-141-37 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 367 of the 2014 Montana Administrative Register, Issue No. 4.

2. On March 24, 2014, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments were received by the March 28, 2014, comment deadline.

3. The department has amended ARM 24.101.413 exactly as proposed.

4. The board has adopted NEW RULE I (ARM 24.141.507) exactly as proposed.

STATE ELECTRICAL BOARD
RICK HUTCHINSON, MASTER
ELECTRICIAN, 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 April 28, 2014

BEFORE THE BOARD OF OCCUPATIONAL THERAPY PRACTICE
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On February 13, 2014, the Board of Occupational Therapy Practice (board) published MAR Notice No. 24-165-20 regarding the public hearing on the proposed adoption of the above-stated rule, at page 313 of the 2014 Montana Administrative Register, Issue No. 3.

2. On March 11, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the March 14, 2014, comment deadline.

3. The board has adopted NEW RULE I (ARM 24.165.406) exactly as proposed.

BOARD OF OCCUPATIONAL THERAPY PRACTICE
NATE NAPRSTEK, CHAIR

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

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

Certified to the Secretary of State April 28, 2014

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

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

TO: All Concerned Persons

1. On March 13, 2014, the Board of Optometry (board) published MAR Notice No. 24-168-40 regarding the public hearing on the proposed adoption of the above-stated rule, at page 473 of the 2014 Montana Administrative Register, Issue No. 5.

2. On April 3, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the April 11, 2014, comment deadline.

3. The board has adopted NEW RULE I (ARM 24.168.406) exactly as proposed.

BOARD OF OPTOMETRY
DOUG KIMBALL, 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 April 28, 2014

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

In the matter of the amendment of ARM 24.180.2301 unprofessional conduct and the adoption of NEW RULE I military training or experience	))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On February 27, 2014, the Board of Plumbers (board) published MAR Notice No. 24-180-48 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 371 of the 2014 Montana Administrative Register, Issue No. 4.

2. On March 24, 2014, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments were received by the March 28, 2014, comment deadline.

3. The board has amended ARM 24.180.2301 exactly as proposed.

4. The board has adopted NEW RULE I (ARM 24.180.502) exactly as proposed.

BOARD OF PLUMBERS
TIM REGAN, 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 April 28, 2014

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

In the matter of the amendment of ARM 24.216.502 minimum standards for sanitarians and sanitarians in training, 24.216.503 examination and the adoption of NEW RULE I military training or experience	))))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On February 13, 2014, the Board of Sanitarians (board) published MAR Notice No. 24-216-21 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 316 of the 2014 Montana Administrative Register, Issue No. 3.

2. On March 11, 2014, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments were received by the March 14, 2014, comment deadline.

3. The board has amended ARM 24.216.502 and 24.216.503 exactly as proposed.

4. The board has adopted NEW RULE I (ARM 24.216.508) exactly as proposed.

BOARD OF SANITARIANS
JIM ZABROCKI, RS, 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 April 28, 2014

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

In the matter of the adoption of New Rule I and the amendment of ARM 37.5.304, 37.50.1101, 37.50.1102, and 37.50.1103 pertaining to the adoption of federal statutes for guardianship	))))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On December 12, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-659 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 2278 of the 2013 Montana Administrative Register, Issue Number 23. On February 13, 2014 the Department of Public Health and Human Services published an Amended Notice of Public Hearing on Proposed Amendment at page 320 of the 2014 Montana Administrative Register, Issue Number 3. The notice was amended to address comments from Legislative Services on the department's statement of reasonable necessity. All rules remained as proposed.

2. The department has adopted the above-stated rule as proposed: New Rule I (37.50.1104).

3. The department has amended ARM 37.5.304, 37.50.1101, 37.50.1102, and 37.50.1103 as proposed.

4. No further comments or testimony were received.

/s/ Mark Prichard
Mark Prichard
Rule Reviewer

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

Certified to the Secretary of State April 28, 2014.

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

In the matter of the amendment of ARM 37.57.102 pertaining to the update of current federal poverty guidelines for the children's special health services program	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 13, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-666 pertaining to the proposed amendment of the above-stated rule at page 486 of the 2014 Montana Administrative Register, Issue Number 5.

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

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to April 1, 2014. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

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

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

Certified to the Secretary of State April 28, 2014.

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

In the matter of the amendment of ARM 37.30.405 pertaining to Vocational Rehabilitation Program payment for services	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On March 27, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-667 pertaining to the proposed amendment of the above-stated rule at page 577 of the 2014 Montana Administrative Register, Issue Number 6.

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

3. No comments or testimony were received.

4. The department intends to apply this rule amendment retroactively to January 30, 2014. A retroactive application of the proposed rule amendment does not result in a negative impact to any affected party.

/s/ Susan Callaghan
Susan Callaghan
Rule Reviewer

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

Certified to the Secretary of State April 28, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.13.111, 42.13.802, 42.13.803, 42.13.804, 42.13.805, and 42.13.806 regarding distilleries	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 12, 2013, the Department of Revenue published MAR Notice Number 42-2-903 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2298 of the 2013 Montana Administrative Register, Issue Number 23.

2. On January 13, 2014, a public hearing was held to consider the proposed amendments. John Iverson of the Montana Tavern Association (MTA), Neil Peterson of the Gaming Industry Association (GIA), John McKee of Headframe Spirits, and Bryan Schultz of RoughStock Distillery, all appeared and testified at the hearing. Mr. McKee and Mr. Schultz also submitted written comments. The department received written comments from Robin Blazer of Willie's Distillery, Jim Harris of Bozeman Spirits Distillery, Mark Hlebichuk of MT Distillery, Casey McGowan of Trailhead Spirits, Ryan Montgomery of Montgomery Distillery, Lauren Oscilowski of Glacier Distilling Company, and Brady Wiseman, sponsor of House Bill 517, L. 2005.

3. The department has amended ARM 42.13.803 and 42.13.804 as proposed.

4. Based upon the comments received and after further review, the department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

42.13.111 DEFINITIONS (1) through (20) remain as proposed.

AUTH: 16-1-303, 16-1-424, ~~16-9-1009~~ 16-4-1009, MCA
IMP: 16-1-424, 16-3-302, 16-3-311, 16-4-312, 16-4-404, 16-4-406, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1006, 16-4-1007, 16-4-1008, 16-6-104, MCA

42.13.802 DOMESTIC DISTILLERIES (1) and (2) remain as proposed.
(3) Upon approval by the department, a domestic distillery licensee may own, lease, maintain, and operate a non-contiguous warehouse for the sole purpose of storing liquor. To seek approval, the licensee shall submit a form provided by the department and include:
(a) verification that the Alcohol and Tobacco Tax and Trade Bureau approved the licensee's registration to operate the warehouse;

(b) verification that local building, health, and fire officials approved the warehouse for its intended use; and

(c) proof of complete control over and possessory interest in the land and warehouse.

(3) and (4) remain as proposed, but are renumbered (4) and (5).

42.13.805 MICRODISTILLERY SAMPLE ROOMS (1) and (2) remain as proposed.

(3) All liquor products provided to a consumer for on- or off-premises consumption in the sample room must have been produced at the microdistillery. For a product to be considered as having been produced at the microdistillery, the following criteria must be met:

(a) as measured by proof gallons on a ~~monthly~~ quarterly basis, at least 90 percent of the aggregate amount of liquor provided for on- and off-premises consumption in the sample room must have been distilled at the microdistillery; and

(b) remains as proposed.

(4) Any microdistillery that is licensed and has a department-approved sample room as of ~~March 1, 2014~~ May 9, 2014, has until October 1, 2015, to come into compliance with (3)(a). Any such microdistillery that does not meet (3)(a) shall, at a minimum, maintain the percentage it has as of ~~March 1, 2014~~ May 9, 2014, until October 1, 2015.

(5) remains as proposed.

(6) To provide a liquor product in a microdistillery sample room, the licensee must obtain either a certificate of label approval or an exemption from label approval from the Alcohol and Tobacco Tax and Trade Bureau.

(7) Regardless of the liquor's alcohol content, a licensee is only permitted to provide not more than 2 ounces of the liquor product approved in (6) for on-premises consumption per individual during a business day.

(6) and (7) remain as proposed, but are renumbered (8) and (9).

42.13.806 USE OF OUTSOURCED DISTILLED SPIRITS IN THE MANUFACTURING OF DISTILLED SPIRITS (1) A distillery licensed by the department and located in Montana may ~~import~~ procure bulk distilled spirits from another distilled spirits plant by requesting such products through the department on a form supplied by the department. The distillery may only use the acquired distilled spirits:

(a) and (b) remain as proposed.

(2) through (5) remain as proposed.

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

COMMENT NO. 1: The department received the following comments regarding the proposed definition in ARM 42.13.111(5) of the term "distilled at the microdistillery."

Mr. Iverson testified that the MTA generally stands in support of the proposed

rules and believes they clarify the existing law and clearly communicate to the industry that the special privileges given to microdistilleries are given for those microdistilleries that are "producing the product." And by "producing the product" he stated that he meant that the microdistilleries were both distilling and crafting the product by adding to it to make blends. The law gives those distillers that are crafting a Montana-made product the opportunity to showcase their special products. These privileges were never intended to be a work-around of the licensing system or to allow showcasing product that the microdistillery is not crafting.

Mr. Iverson commented that he would like the department to tighten up ARM 42.13.111(5). Section (5) defines "distilled at microdistillery" to mean the process of vaporization and subsequent condensation of a beverage containing ethyl alcohol that occurs at the licensed premises. Mr. Iverson would like that definition to state "to be considered as distilled at the microdistillery, a product may not have been previously distilled at another distilled spirits plant." Mr. Iverson stated that this will require microdistilleries that sell booze to actually make the booze and prevent buying a pre-made product, reprocessing it, and calling it their own. This is outside of the intent of the law, and outside of what most Montana consumers expect when they are purchasing a product that they believe is a Montana craft product.

Mr. Iverson commented that the industry was sold to the public as a value-add to Montana agriculture products. It was one of the big selling points of this special set-up created for microdistilleries. Bringing in sourced, neutral-grain spirits, that may primarily be from the Midwest, is not a value-add to Montana agriculture products. Further amending the definition will clarify the intent of the law in the administrative rules to make it clear that those special privileges are allowed only to those that are essentially doing grain-to-bottle distilling.

Mr. Peterson testified that the reason the GIA has an interest in the rules is because an on-premises liquor license is required for an establishment to have a gaming license in Montana. Mr. Peterson further stated that he is generally in support of the rules, but agrees with Mr. Iverson's comments.

Mr. Harris commented that he does not agree with Mr. Iverson's proposed definition because it is more restrictive than the actual statute and no reasonable purpose or cause was given to support a rule that is more restrictive than the statute. As a microdistillery, there are processes that may require using products made outside of the distillery, such as low wines, crèmes and flavoring components. Mr. Harris also commented on Mr. Iverson's testimony that the microdistillery is required to use only Montana products to manufacture or produce alcohol and that the original sample/tasting room was allowed for the reason that it would provide a Montana product that was produced using only Montana grains and/or agricultural products. Mr. Harris stated that this is not the case and that he disagrees with that testimony. Value-add for agriculture was a benefit of the entire bill, not isolated to the tasting room. No purpose or cause is given to make this restriction by rule above and beyond the statute itself.

Mr. McKee commented that he is concerned that Mr. Iverson made partially misleading statements at the hearing by indicating that the privilege to operate a distillery in Montana is predicated upon grain-to-bottle distillation using Montana grains. Mr. McKee stated that he can find no such distinction in any section of Title 16 of the MCA. Furthermore, if considered as true, there would be a deleterious

effect on many different distilleries in Montana that do not use Montana-sourced grains. If added as an amendment to the regulations, some distilleries would be forced to discontinue certain product lines. For example, RoughStock Distillery would be forced to cease production of its bourbon product because its corn is not grown in Montana and Whistling Andy's would be forced to cease production of their various rum products because rum is not made from grain. Mr. McKee further commented that Mr. Iverson's proposal to change the definition would preclude Montana distilleries from producing spirits that contain raw ingredients with material distilled elsewhere. By way of example, Mr. McKee stated that Mr. Iverson's definition would shut down his production of crème liquor because he did not produce the cream used to stabilize the product.

Ms. Oscilowski commented that she sees no need for the language to change as it currently reads the same as the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) definition for distilled spirits.

RESPONSE NO. 1: The department appreciates these comments from the industry. The term "distilled at the microdistillery," as amended in ARM 42.13.805, requires at least 90 percent of the aggregate amount of liquor provided for on- or off-premises consumption in the sample room to have been distilled at the microdistillery.

Sections 16-1-401 and 16-1-404, MCA, permit the importation and use of bulk distilled spirits by a licensed distillery or microdistillery. Further amending the term "distilled at the microdistillery" to prohibit a product from having been previously distilled elsewhere, is impermissible because the administrative rule would impose requirements more restrictive than the statutes. Therefore, no further amendments are being made to the definition at this time.

As background information, House Bill 517, adopted by the 2005 Legislature, allowed for the issuance of a distillery license and prescribed the allowable functions that may be performed by a Montana distillery. Later, the 2011 Legislature adopted Senate Bill 215, which provided for a reduced markup for distilleries that use certain percentages of Montana-produced ingredients. Neither bill required Montana distilleries to adopt a grain-to-bottle concept for all of the products they manufacture.

COMMENT NO. 2: The department received comments regarding the premises suitability requirements for product storage in ARM 42.13.802 from Ms. Blazer, Mr. Harris, Mr. Hlebichuk, Mr. McGowan, Mr. McKee, Mr. Montgomery, Ms. Oscilowski, Mr. Schultz, and Mr. Wiseman. The following is a combined summary of their comments.

Alcohol manufacturing is overseen at the federal level by the TTB of the United States Department of the Treasury. The TTB routinely allows distilleries to bond non-contiguous premises within a ten-mile radius of the distilled spirits plant (DSP), to allow for off-site storage of bonded spirits. The TTB allows these non-contiguous storage operations under a single area bond. In addition, the TTB gives its agents latitude to allow for an even larger area to be covered under an area bond.

This is important to domestic distilleries in Montana because such distilleries commonly start out with a relatively small bonded space and soon require more bonded storage than is available on the original premises. Making whiskey or

brandy requires that spirits be stored in oak barrels which consume a good deal of space. As a quickly growing business, storage space is at a premium. Continuing growth of distilleries requires continuing growth of bonded storage space which is typically unavailable in the original bonded DSP premises.

The rule, as proposed, causes direct economic harm to the industry by severely restricting the physical growth of two-thirds of Montana's distilling enterprises. In order for some distilleries to expand under the proposed regulation, it would be necessary to purchase adjacent property in very expensive urban/commercial districts, properties that very often are not available for sale. Buying contiguous buildings in some locales is not always possible, either from an economic standpoint or because the building next door is not for sale.

The department's proposed language is contravened by 16-4-312(1)(c), MCA, which provides that a distillery located in Montana and licensed pursuant to 16-4-311, MCA, may perform those "operations that are permitted for bonded distillery premises under applicable regulations of the United States department of the treasury." The commenters contend this includes the storage of spirits in non-contiguous bonded storage space. The department's proposed rule creates a new, more restrictive regulation under state rule-making than is implemented by the TTB under federal law and is in direct contradiction to statute.

One commenter stated that he presumes that the purpose of the rule is ultimately to assist in controlling the taxation of alcohol, and added that as the second most regulated industry in the nation, the TTB has this well in hand. Every bit of bonded space used is thoroughly vetted by the federal government, along with the movement and control of alcohol, and its proper taxation.

The commenters request that the department recognize that its proposed rule does not comport with Montana statute and reconsider this proposal and comply with 16-4-312, MCA, by harmonizing its premises requirements with those of the TTB. The department should recognize and permit all bonded distillery premises as permitted by the TTB. This will bring the department's proposed rules into compliance with the statute and give Montana's distillers one set of rules to comply with regarding bonded premises, instead of two.

RESPONSE NO. 2: The department would like to thank the industry for its comments on this issue. The rule has been amended to allow a domestic distillery licensee to seek department approval to have a non-contiguous warehouse for liquor storage, in compliance with the premises requirements of the TTB.

COMMENT NO. 3: The department also received comments regarding the requirement in ARM 42.13.805(3)(a) that 90 percent of the aggregate amount of liquor provided for on- and off-premises consumption in the sample room be distilled at the microdistillery.

Ms. Blazer proposed that the department change the percentage from 90 to 50. She explained that high-proof alcohol is widely used in craft distilleries and is a well-accepted method of producing a hand-crafted product. For example, high-proof neutral alcohol is used in their chokecherry liqueur. They would not be able to replicate this high-proof neutral tasting spirit in their current production equipment because it is specially made for whiskey, brandy, and aromatic vapor-based spirits.

If forced to use a distilled spirit made entirely on-site in order to continue producing a niche Montana product that is popular, but not a large income item, would require an equipment purchase of more than $200,000, which is the real cost of a still with the ability to produce a high-proof neutral alcohol. The other choice would be to discontinue the product. Ms. Blazer submitted that using an alcohol base distilled at a different distillery makes it no less their product. Their method of producing the liqueur drastically alters the original character of the distilled neutral spirit and maintains the original intent of the law.

Ms. Blazer further commented that tracking the aggregate percentage of on-premises distilled spirits will be extremely difficult. The department is proposing that a growing business with a wide variety of products in the tasting room accurately predict the sales of the aggregate of products. Hypothetically, a very popular spirit could hit the threshold of allowed monthly sales after only a few days into the month. Does the department propose that a distillery shall not offer for sale a product that is a very good revenue generator in favor of selling more of a product that may not generate as much revenue for the business? For example, if a distillery sells products A, B, and C, and product A causes the distillery to hit the 90 percent (or her proposed 50 percent) aggregate threshold in the first week of the month, it must be pulled from the shelf.

Ms. Blazer stated that if the sales in Montana are not as strong as needed due to the restriction of the number of allowed salespeople, a large amount of revenue will certainly be lost. In addition to being impossible to track and predict, it unfairly retards the growth of the industry. The forecasted calculations of revenue lost due to this ambiguous aggregate amount are enough to cause their tasting room to freeze hiring of additional employees in the summer months. Ms. Blazer stated that they cannot predict what the consumer wants to sample. Their tasting room allows them to expand into new markets by word of mouth that otherwise would be impossible to reach with their limited budget. It has allowed them to expand into three other states that otherwise would not be carrying their products, based on referrals from people who visited the tasting room and requested the product at their local liquor store.

Mr. Schultz testified that he is generally a proponent of the proposed rule changes, with the exception of (3)(a). He proposed that the department change it from 90 to 100 percent. Mr. Schultz stated that a percentage lower than 100 percent conflicts with 16-4-310, MCA, which requires everything to be made on premises.

RESPONSE NO. 3: The department appreciates these comments. Ms. Blazer recommends reducing the percentage to 50 percent and Mr. Schultz recommends increasing it to 100 percent. These different perspectives from the commenters provide a good example of why the department determined the need to amend the rule as proposed.

As explained at the hearing and provided in the reasonable necessity statement, the amendments were an effort to address an ambiguity in the law. The ambiguity exists because 16-4-310, MCA, defines "produces" as the distillation of liquor occurring on the premises of the microdistillery, while 16-1-401 and 16-1-404, MCA, allow for the importation of bulk distilled spirits for use by a microdistillery.

Based on these potentially conflicting statutory provisions, the department has determined that it is reasonable to allow a microdistillery to use a certain percentage of product acquired from another distilled spirits plant. The department concluded that allowing up to 10 percent of the product to come from an outside source would not compromise the authenticity of the Montana-made products sold by the industry.

The department also understands that tracking percentages and predicting sales on a monthly basis may present challenges to licensees. The department is further amending ARM 42.13.805 to reduce the reporting to a quarterly requirement to allow the distillers additional time to monitor their sales.

COMMENT NO. 4: The department received the following comments regarding the requirement in ARM 42.13.805(4) that any microdistillery that is licensed and has a department-approved sample room as of March 1, 2014, come into compliance with ARM 42.13.805(3)(a) by October 1, 2015.

Ms. Blazer stated that she agrees that the October 1, 2015 compliance deadline is sufficient and should be seamless for most distilleries to comply with. However, Ms. Blazer disagreed with the inclusion of the March 1, 2014, date because the rule then allows existing microdisilleries until October 1, 2015, to come into compliance but requires microdistilleries established after March 1, 2014, to be in immediate compliance. This gives fully developed businesses an unfair advantage. Removing the March 1, 2014, date will afford all microdistilleries until October 1, 2015, to come into compliance, which ensures a level playing field, eliminates one business receiving preferential treatment over another, and affords equal protection under the law.

Mr. Harris commented that he is not in favor of the proposed language and feels that the first sentence in (4) should be removed. He is not in agreement with setting a date of March 1, 2014, and proposed a date of March 1, 2015, instead.

Ms. Oscilowski commented that she would like to see the March 1, 2014, date stricken and allow all distilleries an equal opportunity to come into compliance by October 1, 2015. This would provide all DSPs the same amount of time to come into compliance regardless of their current aggregate percentage of liquor distilled at the microdistillery. Furthermore, this arbitrary date does not allow distilleries the opportunity to work through inventory that is not currently in distribution and provides an unfair advantage to those DSPs that already have product in distribution.

Mr. Schultz commented that he disagrees with the October 1, 2015, date and proposed changing it to October 1, 2014. He explained that the 2015 compliance date is very lengthy and creates consumer confusion, whereas the 2014 date would give all licensees more than enough time to deplete stocks, change sales strategies, rebrand, discontinue, or otherwise dispose of materials and products that are in violation.

Mr. Wiseman commented that he objects to the date provisions because it creates a two-tier system among microdistilleries, with an unfair advantage for distilleries that can qualify with this proposed rule. Distilleries that do not qualify are not being afforded equal protection under the law. Given the dynamic nature of this new industry, the department is certainly aware that a number of new distilleries have recently come on line and that a significant number will come on line before

October 1, 2015. Freezing the status quo as of March 1, 2014, and then allowing a full 18 months for compliance, creates a seriously tilted playing field in favor of the incumbents. New distilleries are typically fast growing businesses.

Mr. Wiseman stated that this proposed rule will allow existing distilleries to grow, but prevent newer distilleries from growing by engaging in exactly the same business activities. He requested that the department revise this proposed rule to allow all distilleries the same opportunity to engage in the same business activities. Given the 18-month compliance period, he suggests that the qualification date of March 1, 2014, be set back by one full year to March 1, 2015. This will create a far more equitable environment for all distilleries, rather than privileging a few to engage in business activities that are denied to others.

RESPONSE NO. 4: The department appreciates the comments addressing this issue. After careful consideration, the department determined not to alter the dates in the proposed rule based on the comments submitted. The department is, however, changing the March 1, 2014, date based on the time of rule adoption. The department has amended the requirement in ARM 42.13.805(4) so that compliance by October 1, 2015, is required for any microdistillery that is licensed and has a department-approved sample room as of May 9, 2014, rather than March 1, 2014. Additionally, a microdistillery is required to at least maintain the percentage it has as of May 9, 2014.

The department would like to address why it did not respond by altering the dates provided in the proposed rule based on the comments provided. First, the department found that altering the compliance deadline from October 1, 2015, to October 1, 2014, would not afford existing distilleries sufficient time to make any necessary adjustments to their business models. Second, the department found that extending the March 1, 2014, date (now amended to May 9, 2014) beyond the rule adoption date, would allow for newly licensed distilleries to enter the market and potentially be immediately out of compliance. While the department sought to afford existing distilleries time to make necessary adjustments, new license applicants can be expected to enter the market with a business model that appropriately accounted for the requirement in ARM 42.13.805(3)(a). Finally, the department believes that distilleries should at least maintain their aggregate percentage from the date of rule adoption until October 1, 2015, to help ensure progress towards a compliant percentage.

COMMENT NO. 5: Ms. Blazer commented that the use of the word "import" in ARM 42.13.806(1) eliminates the possibility of sourcing distilled spirits from another distillery located in Montana, and proposed striking this word.

RESPONSE NO. 5: The department appreciates Ms. Blazer's comment and agrees with her concern. ARM 42.13.806 is being further amended to address this issue by changing the word "import" to "procure," thereby allowing a distillery to acquire bulk spirits from plants located inside or outside of Montana.

6. An electronic copy of this notice is available on the department's web site, revenue.mt.gov. Select the Administrative Rules link under the Other Resources

section located in the body of the homepage and open the Adoption Notices section within. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to the Secretary of State on April 28, 2014

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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