

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 12

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 2.43.3502 pertaining to the	)	AMENDMENT
investment policy statement for the)	
Defined Contribution Retirement Plan	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On August 22, 2014, the Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employee Retirement Administration no later than 5:00 p.m. on July 18, 2014, to advise us of the nature of the accommodation that you need. Please contact Kris Vlastic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvlastic@mt.gov.

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

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND
STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on ~~May 9, 2013~~ May 8, 2014. (2) and (3) remain the same.

AUTH: 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

STATEMENT OF REASONABLE NECESSITY: The Public Employees' Retirement Board, as administrator of the Defined Contribution Retirement Plan (DCRP) of the Public Employees' Retirement System adopted the DCRP's original investment policy statement for the plan in 2002. The investment policy statement is reviewed on a yearly basis and amended to reflect best practices in defined contribution plan investments. Upon recommendation of the Employees' Investment Advisory Council, the board determined on May 8, 2014, to add a socially responsible fund option to the DCRP Investment Policy Statement.

Because the Public Employees' Retirement Board determined to adopt the original investment policy statement by reference, 2-4-307(3), MCA, requires that changes to

the statement also be adopted by reference. Therefore, it is necessary to amend the administrative rules that adopt the statement by reference.

The investment policy statement is available on the board's web page at mpera.mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., July 25, 2014.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kris Vladic at the above address no later than 5:00 p.m., July 25, 2014.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 283 persons based on approximately 2,832 participants in the Defined Contribution Retirement Plan.

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

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

be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

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

Certified to the Secretary of State June 16, 2014

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

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 2.43.3501 and 2.43.5101	)	AMENDMENT
pertaining to the adoption by)	
reference of the State of Montana	)	NO PUBLIC HEARING
Public Employee Defined	)	CONTEMPLATED
Contribution Plan Document and the)	
State of Montana Public Employee)	
Deferred Compensation (457) Plan)	
Document)	

TO: All Concerned Persons

1. On August 22, 2014, the Public Employees' Retirement Board proposes to amend the above-stated rules.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employee Retirement Administration no later than 5:00 p.m. on July 18, 2014, to advise us of the nature of the accommodation that you need. Please contact Kris Vlado, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

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

2.43.3501 ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) remains the same.

(a) State of Montana Public Employee Defined Contribution Plan Document (~~January 1, 2008~~ May 2014 edition) that was approved by the board on ~~November 14, 2008, and amended February 11, 2010~~ May 8, 2014; and

(b) and (2) remain the same.

AUTH: 19-3-2104, MCA
IMP: 19-3-2102, MCA

2.43.5101 ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT (1) remains the same.

(a) State of Montana Public Employee Deferred Compensation Plan Document (~~January 1, 2008~~ May 2014 edition), that was approved by the board on ~~August 14, 2008, and September 11, 2008, and amended February 11, 2010, and June 13, 2013;~~ May 8, 2014; and

(b) and (2) remain the same.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: The Public Employees' Retirement Board, as administrator of the Public Employee Retirement System's Defined Contribution Plan and the State of Montana 457(b) Deferred Compensation Plan, determined to revise the Defined Contribution Plan Document and the Deferred Compensation Plan Document to incorporate recent changes to federal law requirements and processes. The revised plan documents were reviewed and approved by the board at the May 8, 2014 board meeting.

Because the Public Employees' Retirement Board determined to adopt the original plan documents by reference, 2-4-307(3), MCA, requires that changes to the documents also be adopted by reference. Therefore, it is necessary to amend the rules that adopt the plan documents to indicate the version of the plan documents being adopted by reference.

The plan documents are available on the board's web page at mpera.mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., July 25, 2014.

5. If persons who are directly affected by the proposed amendments wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Kris Vladic at the above address no later than 5:00 p.m., July 25, 2014.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed amendments from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1,132 persons based on approximately 2,832 participants in the Defined Contribution Retirement Plan and 8,488 participants in the Deferred Compensation Plan as of June 1, 2014, for a total of 11,320 participants.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency.

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

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

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

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Melanie A. Symons
Melanie A. Symons
Chief Legal Counsel
and Rule Reviewer

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

Certified to the Secretary of State June 16, 2014

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.59.111 pertaining to retention of bank) AMENDMENT
records)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On July 28, 2014, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 17, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.111 RETENTION OF BANK RECORDS (1) Records of customer accounts, as defined in (7), must be held in accordance with 32-1-491, MCA.

(2) The publication "Bank Record Retention Periods - Appendix A to ARM 2.59.111" (Appendix A) ~~schedule Bank Records Publication Appendix "A"~~ establishes the minimum period for retention of bank records other than those specified in 32-1-491, MCA. ~~Bank Records Publication Appendix "A"~~ is maintained by the Commissioner of Banking and Financial Institutions, and may be updated at ~~regular intervals~~ not more than once a year by the commissioner. The ~~December 11, 2006~~ June 2, 2014, edition of the ~~Bank Records Publication Appendix "A"~~ is incorporated by reference as part of this rule. A copy of ~~this document~~ Appendix A can be obtained from the Division of Banking and Financial Institutions, Department of Administration, 301 South Park, P.O. Box 200546, Helena, MT 59620-0546 or found on the department's web site at <http://banking.mt.gov/bank.mcp.x>.

(3) When a bank microfilms, ~~or~~ photographs, or uses other electronic or computer-generated data records in the regular course of business as permitted by 32-1-492 through 32-1-494, MCA, the retention period of the microfilm, photographs, electronic, or computer-generated data must be the same as specified in ~~the Bank Records Publication Appendix "A"~~.

(4) Banks ~~must~~ shall comply with all applicable federal banking laws and regulations requiring specific retention periods for the records enumerated in those

laws or regulations. ~~In the event that a~~ If an applicable federal banking law or regulation concerning record retention conflicts with a retention period contained in Bank Records Publication Appendix "A", 32-1-491, MCA, this rule, or Appendix A, a bank ~~must~~ shall comply with whichever retention period is longer. Banks ~~must~~ shall comply with other applicable state laws governing retention of personnel records, corporation records, etc.

(5) If a bank does not maintain records set forth in ~~Bank Records Publication Appendix "A"~~, but maintains similar records with equivalent information, the bank's similar records must be retained for the time set forth for records specified within Bank Records Publication in Appendix "A" as to the equivalent records.

(6) Records not covered by this rule or 32-1-491, MCA, ~~are to~~ must be retained for a period of time determined appropriate by the bank's board of directors. ~~Such retention~~ Retention periods determined appropriate ~~shall be noted by the board~~ must be maintained as a permanent part of the board's minutes.

(7) "Customer accounts," for record retention purposes under 32-1-491, MCA, and this rule, means customer deposit accounts including savings deposit accounts, checking accounts, or demand deposit accounts, certificates of deposit, safety deposit boxes, and trust accounts, Negotiable Order of Withdrawal (NOW) accounts, and money market deposit accounts.

AUTH: 32-1-491, MCA

IMP: 32-1-218, 32-1-491, 32-1-492, MCA

STATEMENT OF REASONABLE NECESSITY: The publication entitled "Record Retention Periods for Montana State-Chartered Banks Appendix "A" to Montana Administrative Rule 2.59.111 Retention of Bank Records," commonly referred to as Appendix A, December 11, 2006, edition, was revised by the department effective June 2, 2014. The department believes that banks may be relying upon Appendix A as their primary source of record retention information and that there may be confusion relating to the applicable retention period for customer account records because those records are governed by 32-1-491, MCA, and ARM 2.59.111(1) and (7), rather than by Appendix A. A notice to that effect has been included in Appendix A and links to 32-1-491, MCA, and ARM 2.59.111 have been added to the appendix. The revisions also delete from Appendix A information that duplicates parts of ARM 2.59.111 or creates ambiguity when read in conjunction with the rule. The revisions clarify that the retention periods contained in Appendix A are not mere guidance but are mandatory unless longer retention periods are required under applicable federal banking laws or regulations. The revisions include shortening the name of the publication to "Bank Record Retention Periods – Appendix A to ARM 2.59.111" for ease of reference. The adoption date for the revised Appendix A was changed to June 2, 2014.

Based on the changes to the appendix, ARM 2.59.111 must be amended to use the correct name of the publication throughout the rule and incorporate the June 2, 2014 edition of the publication by reference in (1). It is necessary to delete the term "regular intervals" in (1) because the Appendix A is updated on an as-needed basis rather than on a regular schedule. It has been more than seven years since Appendix A was last updated but the publication may need to be updated again

before another seven years elapse due to ongoing information technology developments, changes in the standardized forms used in the banking industry, and changes in applicable federal banking laws and regulations regarding records requirements.

It is necessary to amend (4) to clarify and limit the federal laws and regulations included within the scope of (4). In addition, amendment of (4) is needed to clarify which record retention period governs in the event of a conflict between applicable state and federal laws and regulations regarding records retention requirements.

Section (7) requires amendment to add two common customer deposit account products to the definition of "customer accounts" and to clarify that the types of deposit accounts included in the definition are not exhaustive. The amendments to (7) are also needed to clarify that the types of deposit accounts included in the definition of "customer accounts" do not have common or wholly consistent characteristics that would enable all of them to be classified collectively for any purpose other than records retention. An amendment is also being made to add a web address for the convenience of the public as an additional means of obtaining a copy of Appendix A.

The remaining changes are being made to simplify the language and to comply with drafting convention.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., July 25, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., July 25, 2014.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be six persons based on the 56 existing state-chartered banks.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of

the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department 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 Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

10. The department has determined that under 2-4-111, MCA, the proposed rule amendment will not significantly and directly affect small businesses.

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

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

Certified to the Secretary of State June 16, 2014.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
2.59.104 pertaining to semiannual) AMENDMENT
assessment for banks)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On July 31, 2014, the Department of Administration proposes to amend the above-stated rule.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on July 18, 2014, to advise us of the nature of the accommodation that you need. Please contact Wayne Johnston, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2918; TDD (406) 444-1421; facsimile (406) 841-2930; or e-mail to banking@mt.gov.

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

2.59.104 SEMIANNUAL ASSESSMENT (1) Based upon the following schedule, and upon calculation of the semiannual value for the respective bank, the value must be multiplied by the factor of 1.50 to determine the dollar fee assessment, rounded to the next highest dollar, due the Division of Banking and Financial Institutions for the semiannual period.

<u>Total assets</u> <u>(Million)</u>	<u>Base</u>	<u>Plus rate/</u> <u>Million</u>	<u>Over</u> <u>(Million)</u>
0-1	0	.00085	0
1-10	850	.000105	1
10-50	1,795	.000085	10
50-100	5,195	.00005	50
over 100	7,695	.00003	100

(2) For the period ~~April 26, 2013~~ effective date of this amendment through ~~September 30, 2013~~ December 31, 2014, the assessment fee must be multiplied by a factor of .50. This section will sunset ~~October 1, 2013~~ January 26, 2015.

AUTH: 32-1-213, 32-1-218, MCA
IMP: 32-1-213, 32-1-218, MCA

STATEMENT OF REASONABLE NECESSITY: The banking industry in Montana is currently in a state of flux and there is no end in sight. Due to regulatory pressures and economic factors, the Montana Division of Banking and Financial Institutions (division) has seen a series of mergers and consolidations involving banks in this state and outside of this state over the last 12 months. In the last year, the division has seen three mergers that resulted in gains to the assessments for Montana, and three mergers that resulted in losses to the assessments for Montana.

At this time, one conversion and one merger are pending. They will result in gains to the assessments.

While the division tries to keep its banking assessments in proportion to the costs it spends on supervising Montana banks, it is particularly difficult to do so in the current environment when mergers and conversions throw the assessments into flux.

At this point in time, the division anticipates a net gain in its revenue of \$74,564 semiannually based on the mergers and conversions that either have occurred to date or will occur in the near future.

It is impossible for the division to predict with any certainty which institutions will or will not merge or convert in the future. As a result, the division has chosen to reduce its semiannual assessment for the December assessment by one-half. The division estimates that on an annual basis, based on current costs and estimates of assessments, reducing the assessment by one-half will bring the amount of revenue closer to the cost of supervision. This will reduce the cost to the 55 institutions and lower the amount the division receives in its December assessment.

The division will propose a permanent downward revision in the bank assessments after it becomes reasonably certain that the number and composition of state-chartered banks have reached a relatively stable number. However, at this time, the division has no idea when that may be.

The intent of this amendment is to reduce the assessments that the division will receive in December 2014 from approximately \$1,500,000 to approximately \$750,000. Because this rule revision is intended to be temporary, the division has chosen to have it sunset on January 26, 2015, which will make the amendment effective only for the December 2014 assessment, not for the June 2015 assessment or any assessment thereafter.

4. Concerned persons may present their data, views, or arguments concerning the proposed action to Kelly O'Sullivan, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; or e-mailed to banking@mt.gov; and must be received no later than 5:00 p.m., July 25, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the person listed in 4 above no later than 5:00 p.m., July 25, 2014.

6. If the Division of Banking and Financial Institutions receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be six persons based on the 55 existing state-chartered banks.

7. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules.mcp.x>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department 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 Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request that includes the name and mailing address and e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written requests may be mailed or delivered to Wayne Johnston, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to banking@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

10. The department has determined that under 2-4-111, MCA, the proposed rule amendment will not significantly and directly affect small businesses.

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

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

Certified to the Secretary of State June 16, 2014.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.94.3727 pertaining to the	)	AMENDMENT
administration of the 2013-2014)	
Federal Community Development	)	NO PUBLIC HEARING
Block Grant (CDBG) Program	)	CONTEMPLATED

TO: All Concerned Persons

1. On July 28, 2014, the Department of Commerce proposes to amend the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on July 17, 2014, to advise us of the nature of the accommodation that you need. Please contact Maria Jackson, Planning Program Specialist, Department of Commerce, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2550; fax (406) 841-2771; TDD (406) 841-2702; or e-mail mjackson3@mt.gov.

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

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2013-2014 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program FFY 2013-2014 Application Guidelines for Housing and Public Facilities Planning Grants (June 2014 Draft); the FFY 2013-2014 Application Guidelines for Noncompetitive Housing Grants; the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program as amended April 2012; the FFY 2012 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2013-2014 Application Guidelines for Planning Projects; the Montana Community Development Block Grant FFY 2011 Application Guidelines for the Neighborhood Stabilization Program (NSP); the Montana Community Development Block Grant Program and Neighborhood Stabilization Program FFY 2013-2014 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs; and the Montana Community Development Block Grant Program FFY 2013 and FFY 2014 Application Guidelines for Public Facilities Projects and the FFY 2013 and FFY 2014 Application Guidelines for Housing and Neighborhood Renewal Projects.

(2) remains the same.

(3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at <http://comdev.mt.gov/default.mcp>x or <http://cdbged.mt.gov/draftguidelines.mcp>x, or may be obtained from the Department of Commerce, Community Development Division, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523.

AUTH: 90-1-103, MCA

IMP: 90-1-103, MCA

REASON: The Montana Community Development Block Grant Program FFY 2013-2014 Application Guidelines for Housing and Public Facilities Planning Grants referenced a specific application date of November 1, 2013, for the opening of the FFY13 planning grant cycle. Since the guidelines were intended to span both the FFY13 and FFY14 planning grant funding cycles, the proposed amendment would change the application date to July 11, 2014, to reflect the new date upon which Commerce will begin accepting applications for the federal fiscal year 2014 grant funding cycle.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Commerce, Planning Bureau, 301 South Park Avenue, P.O. Box 200523, Helena, Montana 59620-0523; telephone (406) 841-2770; TDD 841-2702; fax (406) 841-2771; or e-mail DOCQS@mt.gov, and must be received no later than 5:00 p.m., July 24, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Maria Jackson at the above address no later than 5:00 p.m., July 24, 2014.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be eligible applicants for FFY14 CDBG Housing and Public Facilities Planning Grants.

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

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

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

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.

/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 June 16, 2014.

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

In the matter of the adoption of NEW) NOTICE OF PROPOSED
RULE I pertaining to hunters against) ADOPTION
hunger program)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On September 4, 2014, the Department of Fish, Wildlife and Parks (department) proposes to adopt the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than July 11, 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 rule as proposed to be adopted provides as follows:

NEW RULE I HUNTERS AGAINST HUNGER (1) The department will annually distribute all funds accumulated in the hunters against hunger account to a federally tax exempt nonprofit organized under 26 U.S.C. 501(c)(3) with a mission to distribute food and provide charitable services to those in need on a statewide basis.

(2) The organization must:

(a) coordinate with other nonprofit organizations within the state to process game animals donated and distribute the processed meat to those in need;

(b) not charge more than seven percent overhead for grant processing;

(c) provide a list of meat processors responsible for processing donated game animals; and

(d) retain all carcass tags from donated game animals.

(3) Big game animals donated for processing must be legally harvested or confiscated by law enforcement. Game animals killed by a vehicle are not permitted to be processed and distributed under this program.

(4) All processed meat through the hunters against hunger program will be offered at no charge to those in need.

(5) The contract will provide annual reporting requirements and any other conditions necessary. Noncompliance with the contract will result in loss or delay of funds.

AUTH: 87-1-293, MCA

IMP: 87-1-293, 87-1-628, MCA

REASON: SB 123 (2013) established a hunters for hunger program and the department's rulemaking authority to adopt rules to implement the provisions of the statute. The department is proposing the entire account go to one organization that would coordinate efforts statewide for the processing of donated game meat.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the Department of Fish, Wildlife and Parks, Licensing, P.O. Box 200701, Helena, Montana, 59620-0701; fax (406) 444-3707; or e-mail hworsech@mt.gov, and must be received no later than July 25, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the above address no later than July 25, 2014.

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

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

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted via phone and e-mail throughout the rule drafting process.

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

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ M. Jeff Hagener
M. Jeff Hagener
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 16, 2014.

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

In the matter of the adoption of New) NOTICE OF PROPOSED
Rule I pertaining to Wolf Management) ADOPTION
Stamps)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On September 4, 2014, the Department of Fish, Wildlife and Parks (department) proposes to adopt the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on July 11, 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 rule as proposed to be adopted provides as follows:

NEW RULE I WOLF MANAGEMENT STAMPS (1) The department shall create wolf management stamps to be issued to any persons who wish to donate to the department's management of wolves. Any resident or nonresident may purchase one or more such stamps for a donation of \$20.00 each.

(2) Money received from the sale of wolf management stamps will be considered a donation and must first be used to pay for the cost of administering the stamp program. The remainder of the money received must be equally divided and allocated for the following purposes:

(a) grants awarded through the livestock loss reduction program, pursuant to 2-15-3111, MCA;

(b) wolf monitoring, habitat protection or acquisition within occupied wolf habitat, scientific research of wolves, or public education and outreach activities relating to wolves; and

(c) the hiring of additional wardens, as defined by 87-1-101(5), MCA, within occupied wolf habitat.

AUTH: 87-1-201, MCA

IMP: 87-1-201, MCA

REASON: Constituents expressed a desire to the Fish and Wildlife Commission (commission) for a mechanism to donate to the department's management of wolves. The commission, as a result, directed the department to create a wolf management stamp for this purpose. The wolf management stamp will provide an

additional funding source for wolf management in Montana. The voluntary donations provide nonconsumptive users the opportunity to contribute to wildlife management instead of just hunters and anglers.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Wolf Stamp Comments, Department of Fish, Wildlife and Parks, Communication and Education Division, P.O. Box 200701, Helena, Montana, 59620-0701; fax (406) 444-4952; or e-mail fwpwld@mt.gov, and must be received no later than July 25, 2014.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to the above address no later than July 25, 2014.

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

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

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

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

/s/ Rebecca Dockter
Rebecca Dockter
Rule Reviewer

/s/ M. Jeff Hagener
M. Jeff Hagener
Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State June 16, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
17.8.501 and 17.8.504 pertaining to) PROPOSED AMENDMENT
definitions and air quality permit)
application fees) (AIR QUALITY)

TO: All Concerned Persons

1. On July 16, 2014, at 1:00 p.m., the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board 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 Elois Johnson, Paralegal, no later than 5:00 p.m., July 7, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.501 DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) remains the same.

(2) "Major modification" has the same meaning as in ARM 17.8.801.

~~(2) (3) "Modified source facility" means a facility for which an application to modify, as defined in ARM Title 17, chapter 8, subchapter 7 17.8.740, is submitted to the department.~~

~~(3) (4) "New source facility" means a source, as defined in ARM Title 17, chapter 8, subchapter 1, facility for which the department has not previously issued a Montana air quality permit.~~

(5) "New major stationary source" means a major stationary source, as defined in ARM 17.8.801, for which the department has not previously issued a Montana air quality permit.

(4) and (5) remain the same, but are renumbered (6) and (7).

~~(6) "Source type A" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapter 12.~~

~~(7) "Source type B" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapter 7.~~

~~(8) "Source type NSR/PSD" means a facility subject to the provisions of ARM Title 17, chapter 8, subchapters 8, 9, or 10.~~

~~(9) "Source type S/SM" means a facility subject to the provisions of ARM 17.8.1204(3).~~

AUTH: 75-2-111, MCA
IMP: 75-2-211, MCA

REASON: The board is proposing to amend definitions in (2) and (3), renumber them to (3) and (4), and add two definitions as (2) and (5). The board is also proposing to eliminate definitions in (6) through (9). The proposed amendments to (2) and (3) would replace "source" with "facility," which would make the use of those terms consistent throughout the ARM. The proposed new definitions in (2) and (5) would add definitions of "major modification" and "new major stationary source" because those terms would be used in ARM 17.8.504 to define classes of sources for purposes of establishing fees. Those terms are already defined in ARM 17.8.801 and the proposed additions would refer to that rule. The definitions in (6) through (9) are proposed to be eliminated because the proposed amendments to ARM 17.8.504 would eliminate the defined terms from the ARM. Because terms that are not used should not be defined, the board is also proposing to eliminate the definitions in (6) through (9).

17.8.504 AIR QUALITY PERMIT APPLICATION FEES (1) An applicant submitting a Montana air quality permit application, ~~as required in ARM Title 17, chapter 8, subchapters 7, 8, 9, or 10, shall submit an~~ the appropriate application fee as provided in (1)(a), (b), and (c) follows:

~~(a) the following table sets forth source types and associated fees:~~

<u>Source Type</u>	<u>New Source</u>	<u>Modified Source</u>
NSR/PSD	\$15,000	\$500
A	\$1,200	\$500
S/SM	\$1,000	\$500
B	\$800	\$500

~~(b) \$500 for an application for a portable facility; and~~

~~(c) \$500 for an application to register an oil and gas well facility.~~

(a) for a facility subject to ARM Title 17, chapter 8, subchapters 7 and 8, 9, or 10:

(i) for a new major stationary source - \$15,000;

(ii) for a major modification - \$3,500;

(b) for a facility subject to ARM Title 17, chapter 8, subchapter 7, and not subject to subchapters 8, 9, or 10, that is:

(i) required by ARM Title 17, chapter 8, subchapter 12 to obtain an operating permit:

(A) for a new facility - \$2,000;

(B) for a modified facility - \$1,500;

(ii) a new facility that is requesting an exemption under ARM 17.8.1204(3) - \$1,000; or

(iii) a modified facility that has received or is requesting an exemption under ARM 17.8.1204(3) - \$500;

(c) for a facility subject solely to ARM Title 17, chapter 8, subchapter 7:

(i) for a new facility - \$800;

(ii) for a modified facility - \$500;

(iii) for a portable facility - \$500.

(2) An applicant submitting ~~one or more of the following~~ an air quality operating permit applications, ~~as required in ARM Title 17, chapter 8, subchapter 12,~~ shall submit an appropriate application fee, ~~of \$500 for each application~~ as follows:

(a) ~~an application for a new air quality operating permit - \$6,500;~~

(b) ~~an application for an air quality operating permit renewal - \$2,000;~~ or

(c) ~~an application for a significant modification to~~ of an air quality operating permit - \$1,500.

(3) An air quality permit application is incomplete until the ~~proper~~ appropriate application fee is paid to the department.

(4) and (5) remain the same.

AUTH: 75-2-111, 75-2-220, 75-2-234, MCA

IMP: 75-2-211, 75-2-220, 75-2-234, MCA

REASON: The board is proposing to amend (1) through (2)(c). In existing (1)(a), a table uses abbreviations of source categories to set application fees. The abbreviations are defined in ARM 17.8.501(6) through (9). The board is proposing to eliminate those definitions and also the table in ARM 17.8.504 that uses those abbreviations. The sources would instead be categorized for fee purposes by the rule subchapter(s) under which the source is regulated. For example, the abbreviation "NSR/PSD" is defined in existing ARM 17.8.501(8) as "a facility subject to the provisions of ARM Title 17, chapter 8, subchapters 8, 9, or 10." Then, existing ARM 17.8.504(1)(a) uses the term "NSR/PSD" to set the fee for that category. A proposed amendment in ARM 17.8.504(1)(a) would substitute the phrase "a facility subject to ARM Title 17, chapter 8, subchapters 7 and 8, 9, or 10" for "NSR/PSD." Similar amendments are proposed for the other categories used in existing ARM 17.8.504(1)(a) to set fees. This is being proposed to make the rule simpler and clearer. The board believes that the abbreviated terms were not easy to understand without reference to the definitions rule and that the proposed amendments would make the rule easier for the public and a regulated facility to understand.

In addition, in (1)(a), the board is proposing to amend the language that establishes fees for permits for new major stationary sources and major modifications by incorporating the definitions of those terms from ARM 17.8.801, which contains definitions used in ARM Title 17, chapter 8, subchapter 8 to regulate Prevention of Significant Deterioration (PSD) permitting in "attainment" areas, where certain contaminants do not exceed national ambient air quality standards (NAAQS). The PSD program is one part of the New Source Review (NSR) program, which also includes permitting in ARM Title 17, chapter 8, subchapters 9 and 10, for major stationary sources or major modifications in areas where the NAAQS are exceeded ("nonattainment areas") or areas with sources that may contribute to exceedances in a nonattainment area. The incorporation of definitions from ARM 17.8.801 is necessary because those terms are already defined in that rule and the terms in the fee rule must be consistent with the definitions and use of those terms in the

regulatory rules in ARM Title 17, chapter 8, subchapters 8, 9, and 10.

The proposed amendments would also increase certain application fees for Montana air quality permits (MAQPs) for facilities that require major New Source Review (NSR) permits or Montana air quality operating permits (Title V).

Specifically, the board is proposing the following permit application fee amendments:

ARM 17.8.504(1)(a)(ii) - MAQP for an NSR major modification from \$500 to \$3,500

ARM 17.8.504(1)(b)(i)(A) - MAQP for a New Title V facility from \$1,200 to \$2,000

ARM 17.8.504(1)(b)(i)(B) - MAQP for a Modified Title V facility from \$500 to \$1,500

ARM 17.8.504(2)(a) - New Title V operating permit from \$500 to \$6,500

ARM 17.8.504(2)(b) - Title V operating permit renewal from \$500 to \$2,000

ARM 17.8.504(2)(c) - Title V operating permit modification from \$500 to \$1,500

The board is required by statute to "adopt a schedule of fees required for permits, permit applications, and registrations" Section 75-2-111(5), MCA. While the board is responsible for adopting the fee schedule, an air permit applicant has the responsibility to "submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements" of the air quality laws and rules. Section 75-2-220, MCA. Currently, permit applicants subject to the requirements of the department's Title V and NSR Montana air quality permit programs pay permit application fees that do not cover the costs incurred by the department in processing these permit applications. These costs are funded instead by the annual operating fees paid by existing businesses. This creates a situation where existing businesses are subsidizing new businesses. The board is proposing to reduce that subsidy by increasing the application fees for: (a) a facility subject to NSR major modification; (b) a new or modified MAQP for a facility subject to Title V operating permits; and (c) a new Title V operating permit, renewal, or modification.

The proposed levels of fee increases were developed in consultation with stakeholders. Those levels do not totally eliminate the subsidy, but will reduce it by a substantial amount.

In an effort to determine potential monetary impacts on facilities subject to the proposed application fee amendments, the board averaged the number of potentially affected applications received by the department per year over calendar years 2009-2013, which represents the most recent five-year period for which data is available. The following table shows the cumulative increase in air quality permit application fees for the average year within that period:

Application Type	Rule (all in ARM Title 17, chapter 8)	Average Number of Applications/Year	Average Increase From Proposed Rule/Year
<u>MAQP (Montana Air Quality Permit)</u>			
NSR Major Modification	subchapters 7 and 8, 9, or 10	0.2	\$600.00
New MAQP for a Facility Requiring an Operating Permit	subchapters 7 and 12	8.2	\$6,560.00
MAQP Modification for a Facility Requiring an Operating Permit	subchapters 7 and 12	1.2	\$1,200.00
TOTAL			\$8,360.00
<u>Operating (Title V) Permit</u>			
New	subchapter 12	1	\$6,000.00
Renewal	subchapter 12	12	\$18,000.00
Modification	subchapter 12	10	\$10,000.00
TOTAL			\$34,000.00

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., July 24, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Ben Reed, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board 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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine

reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

BY: /s/ Robin Shropshire
ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, June 16, 2014.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.8.818 and 17.8.820 pertaining to)
review of major stationary sources and)
major modifications--source applicability)
and exemptions and source impact)
analysis)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(AIR QUALITY)

TO: All Concerned Persons

1. On July 16, 2014, at 2:00 p.m., or at the conclusion of the hearing for MAR Notice No. 17-360, the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The board 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 Elois Johnson, Paralegal, no later than 5:00 p.m., July 7, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.8.818 REVIEW OF MAJOR STATIONARY SOURCES AND MAJOR MODIFICATIONS--SOURCE APPLICABILITY AND EXEMPTIONS (1) through (6) remain the same.

(7) The department may exempt a proposed major stationary source or major modification from the requirements of ARM 17.8.822, with respect to monitoring for a particular pollutant, if:

(a) the emissions increase of the pollutant from a new stationary source or the net emissions increase of the pollutant from a modification would cause, in any area, air quality impacts less than the following amounts:

(i) and (ii) remain the same.

(iii) PM-2.5: 4 [4 stricken] 0 µg/m³, 24-hour average;

(iv) through (c) remain the same.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

17.8.820 SOURCE IMPACT ANALYSIS (1) remains the same.

~~(2) For purposes of PM-2.5, the demonstration required in (1) is made if the emissions increase from the new stationary source alone or from the modification~~

alone would cause in all areas, air quality impacts less than the following amounts:

Pollutant	Averaging time	Class I area	Class II area	Class III area
PM-2.5	Annual	0.06 $\mu\text{g}/\text{m}^3$	0.3 $\mu\text{g}/\text{m}^3$	0.3 $\mu\text{g}/\text{m}^3$
	24-hour	0.07 $\mu\text{g}/\text{m}^3$	1.2 $\mu\text{g}/\text{m}^3$	1.2 $\mu\text{g}/\text{m}^3$

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-202, 75-2-203, 75-2-204, MCA

REASON: On December 17, 2010, the Sierra Club petitioned the United States Court of Appeals for the District of Columbia Circuit (Court) to review the 2010 PM-2.5 significant impact levels (SILs) and significant monitoring concentration (SMC) final rule.

On January 22, 2013, the Court granted a request from the U.S. Environmental Protection Agency (EPA) to vacate and remand to the EPA portions of the New Source Review-Prevention of Significant Deterioration (NSR-PSD) regulations (40 CFR 51.166(k)(2) and 52.21(k)(2)) establishing the SILs for PM-2.5 so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. The Court further vacated the portions of the NSR-PSD regulations (40 CFR 51.166(i)(5)(i)(c) and 52.21(i)(5)(i)(c)) establishing a PM-2.5 SMC, finding that the EPA lacked legal authority to adopt and use the PM-2.5 SMC to exempt permit applicants from the statutory requirement to compile and submit ambient monitoring data. Rather than eliminating, the EPA revised the SMC for PM-2.5 from four micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) to 0 $\mu\text{g}/\text{m}^3$, indicating that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM-2.5 monitoring requirements.

The board is proposing to amend ARM 17.8.818(7)(a)(iii), which concerns the SMC for particulate matter with a diameter of less than 2.5 microns (PM-2.5), from four $\mu\text{g}/\text{m}^3$ to 0 $\mu\text{g}/\text{m}^3$. In *Sierra Club v. EPA*, 705 F.3d 458, 403 U.S. App. D.C. 318 (2013), the United States Court of Appeals for the District of Columbia Circuit (Court) vacated the portions of the NSR-PSD regulations establishing a PM-2.5 SMC, finding that the EPA lacked legal authority to adopt and use the PM-2.5 SMC to exempt permit applicants from a statutory requirement to compile and submit ambient monitoring data. In response to that decision, EPA adopted a final rule that did not eliminate SMC completely, but rather revised the SMC for PM-2.5 from 4 $\mu\text{g}/\text{m}^3$ to 0 $\mu\text{g}/\text{m}^3$, indicating that there is no air quality impact level below which a reviewing authority has the discretion to exempt a source from the PM-2.5 monitoring requirements. See *Prevention of Significant Deterioration for PM-2.5--SILs and SMCs: Removal of Vacated Elements, Final Rule*, 78 Fed.Reg. 73698 (December 9, 2013). The proposed amendment would make the board's rule consistent with and as stringent as the EPA regulation. This would ensure Montana's ongoing NSR-PSD program primacy and authority.

The board is proposing to delete ARM 17.8.820(2), which includes a table. Section (2) concerns PM-2.5 SILs, which are screening tools that have been applied in NSR-PSD permitting to demonstrate that the proposed source's allowable

emissions will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS) or increment. In the *Sierra Club v. EPA* case cited above, the Court granted a request from EPA to vacate and remand to EPA portions of the NSR-PSD regulations establishing the SILs for PM-2.5 so that the EPA could reconcile the inconsistency between the regulatory text and certain statements in the preamble to the 2010 final rule. To accomplish this, EPA adopted the final rule cited above. The proposed deletion would make the board's rule consistent with and as stringent as the EPA regulation. This would ensure Montana's ongoing NSR-PSD program primacy and authority.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., July 24, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. The attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board 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 that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

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

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

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

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

BY: /s/ Robin Shropshire
ROBIN SHROPSHIRE
Chairman

Certified to the Secretary of State, June 16, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)
17.53.105 and 17.53.401 pertaining to)
incorporation by reference and no state)
waste delisting - federal petition required)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

(HAZARDOUS WASTE)

TO: All Concerned Persons

1. On July 21, 2014, at 10:00 a.m., the Department of Environmental Quality will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 Elois Johnson, Paralegal, no later than 5:00 p.m., July 7, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.53.105 INCORPORATION BY REFERENCE (1) and (2) remain the same.

(3) Except as provided in (4), references in this chapter that incorporate 40 CFR 60, 61, 63, 124, 260 through 268, 270, 273, or 279 refer to the version of that publication revised as of July 1, ~~2012~~ 2014. References in this chapter to 40 CFR 124, 260 through 268, 270, 273, or 279 that incorporate publications refer to the version of the publication as specified at 40 CFR 260.11. Provisions within 40 CFR 60, 61, and 63 that are referenced in 40 CFR 124, 260 through 268, 270, 273, or 279 are also incorporated by reference.

(4) through (8) remain the same.

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

REASON: The department is proposing to amend ARM 17.53.105 to incorporate by reference the most recent version of the Code of Federal Regulations (CFR). The incorporation by reference process is accomplished by amending the CFR publication date specified in ARM 17.53.105(3). The proposed amendment allows the department to maintain consistency with EPA regulations and preserve the hazardous waste program authorization.

17.53.401 NO STATE WASTE DELISTING – FEDERAL PETITION REQUIRED (1) remains the same.

(2) The provisions in 40 CFR 260.20, ~~260.21~~ and through 260.23, pertaining to rulemaking petitions, are not incorporated by reference. Thus, any reference to petitions under these provisions in 40 CFR 124, 260 through 266, 268, 270, 273, and 279, incorporated by reference by this chapter, are not applicable under the Montana hazardous waste program.

AUTH: 75-10-405, MCA

IMP: 75-10-405, MCA

REASON: The department is proposing to amend ARM 17.53.401(2) to resolve an inadvertent omission of a cross-reference to 40 CFR 260.22. Section (1) of the rule provides that delisting petitions must be filed with EPA. To implement this provision, (2) excludes from the state rules EPA delisting petition regulations in 40 CFR 260.20. There is no reason to not exclude 40 CFR 260.22, which also provides for delisting petitions. The proposed amendment corrects the omission and does not change the meaning or intent of ARM 17.53.401.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., July 24, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Carol Schmidt, attorney, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; e-mailed to ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

8. 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.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH

Rule Reviewer

BY: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, Director

Certified to the Secretary of State, June 16, 2014.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.36.326 and 17.36.327 pertaining to)	PROPOSED AMENDMENT
sewage systems: operation and)	
maintenance, ownership, easements,)	(SUBDIVISIONS/ON-SITE
and agreements; and sewage systems:)	SUBSURFACE WASTEWATER
existing systems)	TREATMENT)

TO: All Concerned Persons

1. On July 23, 2014, at 1:00 p.m., the Department of Environmental Quality will hold a public hearing in Room 40, Metcalf Building, 1520 East Sixth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

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 Elois Johnson, Paralegal, no later than 5:00 p.m., July 7, 2014, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

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

17.36.326 SEWAGE SYSTEMS: OPERATION AND MAINTENANCE, OWNERSHIP, EASEMENTS, AND AGREEMENTS AND EASEMENTS (1) The applicant shall demonstrate that all public, and multiple-user, ~~and shared~~ sewage systems will be adequately operated and maintained and shall submit an operation and maintenance manual acceptable to the department. If required by Department Circulars DEQ-2 or DEQ-4, the operation and maintenance manual must meet the requirements of that circular.

~~(2) For public and multiple-user systems, a homeowners' association, county sewer district, or other administrative entity, with the power to charge appropriate fees, must be established as part of the operation and maintenance plan required by department Circular DEQ-4. Public systems must be owned by an individual or entity that meets the requirements of 75-6-126, MCA.~~

(3) For multiple-user systems, the reviewing authority may require the applicant to create a homeowners' association, county sewer district, or other administrative entity that will be responsible for operation and maintenance and that will have authority to charge appropriate fees.

~~(3) (4) For public, multiple-user, and shared systems, easements~~ Easements must be obtained if the reviewing authority determines they are needed to allow adequate operation and maintenance of the system or to comply with 76-4-104(6)(i), MCA. ~~Easements must be in a form acceptable to the department filed with the~~

county clerk and recorder at the time the certificate of subdivision approval issued under this chapter is filed. Easements must be:

(a) in writing signed by the grantor of the easement; or

(b) if the same person owns both parcels, shown on the plat or certificate of survey for the proposed subdivision.

~~(4)~~ (5) Users of multiple-user and shared sewage systems must have an agreement that identifies the rights of each user. ~~Shared u~~User agreements must be in a form acceptable to the department.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments add to and change the word order in the title of the rule. This is necessary for the rule title to identify all of the subjects addressed in the rule and to show the order in which they are addressed.

The proposed amendments to ARM 17.36.326(1) exclude shared sewage systems from the requirement to provide an operation and maintenance manual. It is not necessary to have a written manual for shared (two-user) systems. This amendment is also necessary to be consistent with the corresponding requirements for water supply systems in ARM 17.36.334(1). The proposed amendments also add a reference to DEQ-2 and DEQ-4. This is necessary to inform subdivision applicants about additional requirements that may be applicable to some systems as provided in the circulars.

The proposed amendments to ARM 17.36.326(2) revise the ownership requirements for public sewage systems. The amendments are necessary to conform to the statutory requirements in 75-6-126, MCA. The existing rule allows unincorporated associations to own a public sewage system, which is contrary to the statute. Conversely, the statute allows individuals to own a public sewage system, which is not allowed by the current rule. The proposed amendments move the ownership requirements for multiple-user systems to a new ARM 17.36.326(3).

Proposed new ARM 17.36.326(3) restates the ownership provisions for multiple-user sewage systems currently found in ARM 17.36.326(2), but gives the reviewing authority discretion whether to require the creation of an ownership entity such as a homeowners' association, county district, or other entity. It is not necessary to create an ownership entity in every case, e.g., if a multiple-user system is owned by a single individual.

The proposed amendments to renumbered ARM 17.36.326(4) delete the list of specific sewage systems that may be required to have easements. Because the rule applies to all types of systems, it is not necessary to specifically list each type. The amendments also clarify that easements may be required if needed to allow adequate operation and maintenance of the system or to comply with the provisions in statute that allow mixing zones to cross subdivision boundaries through easements. The proposed amendments also require that easements be in the form of a written easement signed by the grantor or, if the same person owns both parcels, require that the easement be shown on the plat or certificate of survey for the subdivision. This amendment is necessary to ensure the easement is valid and effective.

The proposed amendments to renumbered ARM 17.36.326(5) add multiple-

user systems to the types of systems required to have agreements that show the rights of each user. The current rule requires agreements only for shared systems. It is necessary to have user agreements for multiple-user systems to ensure that responsibilities for system operation and maintenance are clearly identified.

17.36.327 SEWAGE SYSTEMS: EXISTING SYSTEMS (1) The provisions of (2) through (5) apply only to existing non-public sewage systems in proposed subdivisions. Public water supply systems must meet the requirements of Title 75, chapter 6, MCA, and rules promulgated thereunder.

~~(4)~~ (2) If an existing sewage treatment system is present, the department shall review the adequacy of the existing system for the proposed use and the capability of the existing system to operate without risk to public health and without pollution of state waters. To assist the department in making this determination, the applicant shall submit the following information, together with fees as provided in ARM 17.36.802:

(a) through (c) remain the same.

~~(2)~~ (3) Unless a waiver is approved by the department pursuant to ARM 17.36.601, the drainfields and sand mounds for existing systems must be located at least 100 feet from wells. The lot size requirements in ARM 17.36.340 apply to parcels with existing sewage systems, except that the setbacks in ARM 17.36.323 may be waived for existing sewage systems pursuant to ARM 17.36.601.

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

~~(4)~~ (5) Existing cesspools, and pit privies, ~~and holding tanks~~ must be replaced by a system approved under this subchapter. Holding tanks may be allowed by waiver pursuant to ARM 17.36.321(3)(g)(ii). Existing sealed pit privies must also be replaced, unless they are at a facility owned and operated by a local, state, or federal unit of government, or are at a facility where use of a sealed pit privy is authorized by the Department of Public Health and Human Services.

AUTH: 76-4-104, MCA

IMP: 76-4-104, MCA

REASON: The proposed amendments to ARM 17.36.327 add a new (1) to clarify that the provisions of renumbered (2) through (5) apply only to existing non-public sewage systems in subdivisions. The amendments clarify that the requirements applicable to existing public sewage systems within a proposed subdivision are those set out in Title 75, chapter 6, MCA, and rules promulgated thereunder. These amendments are necessary to clearly identify the requirements that are applicable to existing public and non-public sewage systems in proposed subdivisions.

The proposed amendments to ARM 17.36.327(1), which is renumbered as (2), clarify that fees apply for review of existing sewage systems. This is not a substantive change, but is necessary to identify all requirements that apply to existing systems.

The proposed amendments to (2), which is renumbered (3), refer to ARM 17.36.340. With the amendments to ARM 17.36.340 proposed in MAR Notice No. 17-358, this would make existing sewage systems subject to all of the setbacks in

ARM 17.36.323, not just the setbacks for drainfields and sand mounds. Compliance with these setback requirements is necessary to protect public health and the environment. The proposed amendments retain the existing setback waiver provision and add the waivers in ARM 17.36.601. These waivers ensure that setbacks are required only when necessary to protect public health and the environment.

The proposed amendments to ARM 17.36.327(4), renumbered as (5), allow holding tanks to be used if allowed by waiver pursuant to ARM 17.36.321(3)(g)(ii). ARM 17.36.321(3)(g)(ii) is a new provision proposed in MAR Notice No. 17-359 that allows the department to allow holding tanks by waiver in a situation where a system has failed and there is no other alternative available. The reference in this rule to the holding tank waiver is necessary to identify provisions applicable to existing systems.

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 Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., July 24, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Paul Nicol, attorney for the Department of Environmental Quality, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supplies; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

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

8. 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.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL
QUALITY

/s/ John F. North

JOHN F. NORTH
Rule Reviewer

BY: /s/ Tracy Stone-Manning

TRACY STONE-MANNING, Director

Certified to the Secretary of State, June 16, 2014.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.101.413 renewal dates and)
requirements, 24.183.301 definition of)
responsible charge, 24.183.402)
board meetings, 24.183.404 fee)
schedule, 24.183.501 approval of)
schools, 24.183.503 application)
references, 24.183.509 examination)
procedures, 24.183.510 grant and)
issue licenses, 24.183.701 and)
24.183.801 comity, 24.183.702 and)
24.183.802 classification of)
experience, 24.183.1001 form of)
corner records, 24.183.1101 uniform)
standards for monumentation,)
24.183.1107 uniform standards for)
final subdivision plats, the adoption of)
NEW RULE I remonumentation and)
rehabilitation, II architectural services)
incidental to engineering, III exhibits)
of land surveying projects, IV)
unprofessional conduct, and the)
repeal of 24.183.2201 introduction,)
24.183.2203 performance of services,)
24.183.2204 conflicts of interest,)
24.183.2205 avoidance of improper)
solicitation, and 24.183.2206)
issuance of public statements)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT,
ADOPTION, AND REPEAL

TO: All Concerned Persons

1. On July 17, 2014, at 1:00 p.m., a public hearing will be held in Large Conference Room, 301 South Park Avenue, 4th Floor, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Professional Engineers and Professional Land Surveyors (board) no later than 5:00 p.m., on Friday, July 11, 2014, to advise us of the nature of the accommodation that you need. Please contact Ian Marquand, Board of Professional Engineers and Professional Land Surveyors, 301 South Park

Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2360; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibsdpels@mt.gov (board's e-mail).

3. The department is proposing to amend the following rule. The rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

24.101.413 RENEWAL DATES AND REQUIREMENTS (1) through (5)(ac) remain the same.

	BOARD OR PROGRAM JURISDICTION	LICENSE CATEGORY	FREQUENCY	RENEWAL DATE
(ad)	Professional Engineers and Professional Land Surveyors	Certificate of Authorization	Annually	October 1
		Emeritus Status		
		Engineer Intern	Indefinite <u>Biennially, as of June 30, 2015</u>	<u>June 30</u>
		Land Surveyor Intern	None, Indefinite <u>Biennially, as of June 30, 2015</u>	<u>June 30</u>
		Professional Engineer	Biennially, Even Numbered Years	June 30
		Professional Engineer by Comity	Biennially, Even Numbered Years	June 30
		Professional Land Surveyor	Biennially, Even Numbered Years	June 30
		Professional Land Surveyor by Comity	Biennially, Even Numbered Years	June 30

(ae) through (7) remain the same.

AUTH: 37-1-101, 37-1-141, MCA
IMP: 37-1-101, 37-1-141, MCA

REASON: The board determined it is reasonably necessary to establish a renewal process for engineer intern and land surveyor intern certificates. With input from the DLI BSD Licensing Bureau, the department is amending this rule to provide for the renewal of these certificates at two-year intervals, dating from the initial issuance of the certificate. Renewal of these certificates will be staggered, with roughly half in

odd-numbered years, and the remainder in even-numbered years. The renewal date will be June 30, the same as professional engineers and professional land surveyors.

4. The board is proposing to amend the following rules. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.183.301 DEFINITION STANDARDS OF RESPONSIBLE CHARGE FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS (1) The term "responsible charge" directly relates to the degree of control ~~a licensee~~ an engineer is required to maintain while exercising independent control and direction of engineering ~~or land surveying work,~~ and to the decisions which can be made only under the direct supervision of a professional engineer ~~or a professional land surveyor.~~

(a) The degree of control necessary to be in responsible charge shall be such that ~~the~~ a licensee:

(i) personally makes engineering ~~or land surveying~~ decisions, or reviews and approves proposed decisions prior to their implementation, including consideration of alternatives, whenever technical decisions are made. In making engineering ~~or land surveying~~ decisions, ~~the~~ a licensee must be physically present or through the use of communication devices, can be available in a reasonable period of time; and

(ii) remains the same.

(b) To be considered in responsible charge of a project, ~~the professional~~ a licensee who signs engineering ~~or land surveying~~ documents must be capable of answering questions asked by equally qualified professionals. These questions would be relevant to the decisions made during ~~the individual's~~ a licensee's participation in the project and require responses in sufficient detail to leave little question as to ~~the~~ a licensee's technical knowledge of the work performed. It is not necessary to defend decisions as in an adversary situation, but only to demonstrate that ~~the individual~~ a licensee in responsible charge made the decisions and possessed sufficient knowledge of the project to make the decisions.

(i) ~~examples~~ Examples of questions to be answered by ~~the~~ an engineer could relate to criteria for design, methods of analysis, methods of manufacture and construction, selection of materials and systems, economics of alternate solutions, and environmental considerations. ~~The individual~~ A licensee should be able to clearly define the degree of control and how it is exercised within the organization and geographically, and to demonstrate that ~~the~~ an engineer is answerable within that degree of control.

~~(ii) examples of questions to be answered by the land surveyor could relate to criteria for design, methods of analysis and conclusions made including, but not limited to, the retracement of government surveys, interpretation and construction of deeds, application of proportion methods and analysis of evidence related to unwritten property rights. The individual should be able to clearly define the degree of control and how it is exercised within the organization and geographically and to demonstrate that the land surveyor is answerable within that degree of control.~~

(2) The term "responsible charge" means that a land surveyor is required to maintain independent control over all facets of land surveying work.

(a) The degree of control necessary to be in responsible charge shall be such that a licensee personally makes land surveying decisions. In making land surveying decisions, a licensee must be physically present or able to provide verifiable evidence of personal knowledge of the land surveying work.

(b) To be considered in responsible charge of a project, a licensee who signs land surveying documents must be capable of defending the contents of the resulting documents by addressing issues related to the documents. Examples of issues include, but are not limited to:

- (i) criteria for designs;
- (ii) methods of analysis and conclusions made;
- (iii) performance of surveys;
- (iv) interpretation and construction of deeds;
- (v) application of proportion methods; and
- (vi) analysis of evidence related to unwritten property rights.

(c) A licensee should be able to clearly define the degree of control and how it is exercised within the organization and geographically, and to demonstrate that a land surveyor is answerable within that degree of control.

AUTH: 37-67-202, MCA
IMP: 37-67-101, MCA

REASON: The board is amending this rule for clarity after noting that the current rule contains only a single provision that applies equally to professional engineers and professional land surveyors. The board is amending the rule to separate and differentiate the provisions between those standards of responsible charge for professional engineers in (1) and those that apply to professional land surveyors in (2). The board is also amending the catchphrase of this rule to more accurately describe the intent and purpose of the rule.

24.183.402 BOARD MEETINGS (1) The board shall hold at least two meetings annually, with ~~ten days~~ public notice as prescribed by the Department of Labor and Industry, and as called by the presiding officer.

AUTH: 37-67-202, MCA
IMP: 37-67-201, MCA

REASON: The board is amending this rule to remove outdated language and rely strictly on the department's standards for meeting notice.

24.183.404 FEE SCHEDULE (1) through (3)(c) remain the same.

- (i) Initial application 50 100
- (ii) and (3)(d) remain the same.
- (i) Initial application 50 100
- (ii) ~~Reexamination-only~~ Examination and reexamination for Montana law specific exam 50 100
- (iii) remains the same.
- (iv) Application by comity ~~which includes Montana law specific exam~~ 200

(e) remains the same.	
(i) Initial application	60 <u>100</u>
(ii) remains the same.	
(iii) Certificate of authorization late renewal	25
(f) remains the same.	
(i) Professional engineer	90 <u>100</u>
(ii) Professional land surveyor	90 <u>100</u>
(iii) Dual license as a professional engineer and land surveyor	440 <u>120</u>
<u>(iv) Renewal fee for EI, LSI</u>	<u>25</u>
(g) remains the same.	
(i) Emeritus application	\$25
(ii) and (iii) remain the same.	
(iv) Reexamination fee for PE, PLS, LSI, EI <u>PS, FS</u>	25
(v) Exam reschedule fee for PE, PLS, LSI, EI <u>PS, FS</u>	25
(vi) and (4) remain the same.	

AUTH: 37-1-134, 37-67-202, 37-67-311, MCA

IMP: 37-1-134, 37-1-141, 37-1-319, 37-67-303, 37-67-311, 37-67-312, 37-67-313, 37-67-320, 37-67-321, MCA

REASON: In providing administrative services to the board, the department advised the board that costs of application reviews have increased. The board concluded that a small increase in all initial license application fees is appropriate and commensurate with the costs of application processing.

The board is implementing a new state-specific land surveyor examination later in 2014 and will enter into a contract with a vendor for grading, examinee diagnostics, and examination evaluation. The board is increasing the examination and reexamination fee in (3)(d)(ii) as the contract will require a higher exam fee.

The board is amending (3)(d)(iv) to separate the Montana law specific exam for land surveyors from the application by comity fee, and move the exam fee to (3)(d)(ii). Because the application process and administration of the state LS exam are separate actions, the board determined they should have separate, discrete fees. The board believes this amendment will also address the possible situation where an LS applicant may apply, sit for, and pass the NCEES PS exam, but then pursue licensure in another state and not take the Montana law specific exam.

It is reasonably necessary to strike (3)(e)(iii) and eliminate the late renewal fee for certificates of authorization. The board notes that all late renewal fees are addressed in department rule at ARM 24.101.403, and that this fee will remain the same following this amendment.

In budget discussions on matching revenues to expenses, the board concluded that a modest increase in renewal fees for engineers and land surveyors is appropriate to ensure the board's financial viability in the future. The board is therefore amending (3)(f)(i)-(iii) to slightly increase renewal fees and keep fees commensurate with associated costs of processing license renewals.

In this notice, the board is amending rules to establish a renewal process for engineer intern and land surveyor intern certificates. The board determined it is reasonably necessary to set a fee in (3)(f)(iv) commensurate with the costs to

establish the renewal process, create computer-based renewal systems, and any personnel costs associated with these renewals.

The board is amending (3)(g)(iv) and (v) to accurately set forth the names of the acceptable exams. As well, since the board no longer approves examinees for the Fundamentals of Engineering exam (EI), the board is removing the exam from the list.

The board anticipates that all proposed fee increases will affect approximately 9,740 licensees and applicants and will generate \$168,860 in additional revenue.

24.183.501 APPROVAL OF SCHOOLS BOARD-APPROVED CURRICULA

(1) remains the same.

(2) The board-approved curriculum for land surveying applicants shall contain a minimum of 60 semester credits and must include seven credits in English, seven credits in math, six credits in drafting, nine credits in basic science, five credits in humanities and social sciences, 11 credits in surveying techniques, and 16 credits in principles and practice of land surveying courses. One academic quarter's credit shall be credited at two-thirds semester credit.

~~(2) (3) The board will shall make a list available that shows the of Montana schools offering which offer land surveying curricula acceptable to~~ accepted by the board. All course credits acceptable accepted as transferable to the land surveying curricula of any school approved by the board will shall be acceptable accepted by the board when transfer is accomplished by the applicant.

AUTH: 37-67-202, MCA

IMP: 37-67-306, MCA

REASON: The board determined it is reasonably necessary to add (2) and clearly set forth in rule the approved land surveying curriculum, rather than allow it to remain a policy subject to frequent change and/or challenges. The board is further amending the rule for clarity, better organization, and improved grammar. The board is amending the title or catchphrase to more accurately reflect the purpose of the rule to implement the board's statutory authority to approve curricula, not approve the schools at which curricula are taught.

24.183.503 APPLICATION REFERENCES (1) The applicant shall arrange for the submission of completed reference forms as described in 37-67-305 and/or 37-67-308, MCA. The application must include a reference form, which the applicant shall provide to the references listed on the application. The reference form must be received directly from the ~~applicants'~~ applicant's references. ~~For each working engagement listed showing experience, at least one individual shall serve as a reference for that engagement.~~

~~(2) No reference will be accepted by the board, unless the~~ The board will accept a reference form only when it is fully completed and bears the signature of the reference. Until such time as the required All completed and signed reference forms are must be received, before the board will not take action on the application.

AUTH: 37-67-202, MCA

IMP: 37-67-303, 37-67-305, 37-67-308, MCA

REASON: The board determined it is reasonably necessary to amend this rule to eliminate confusion over applicant references and the naming of supervisors for working engagements, and clarify the board's intent that references actually have knowledge of the applicant. The board discovered that current rule language may lead applicants to believe every reference must be a supervisor, when the reference could be a non-supervisory co-worker or another professional colleague familiar with the applicant's work. Additionally, a supervisor from a working engagement may be deceased or cannot be located.

24.183.509 EXAMINATION PROCEDURES (1) remains the same.

~~(2) Applicants will be notified of the time and place of examination at least 30 days in advance. The applicant will not be allowed to reschedule the examination without approval by board staff or a board designee. An applicant will be required to pay an exam reschedule fee if they wish to reschedule their examination 30 days after receipt of their original exam notification letter. Applicants for the Fundamentals of Engineering exam may register directly with the National Council of Examiners for Engineering and Surveying (NCEES) without prior approval of the board and may take the examination at any location offered by NCEES. NCEES shall schedule the exam and collect all required fees, including fees for rescheduling an exam.~~

~~(3) An applicant Applicants for the Fundamentals of Land Surveying, Principles and Practices of Engineering, and Principles and Practices of Land Surveying exams who is are approved by the board must may take the examination at a any location in Montana offered by NCEES.~~

~~(4) Applicants will be notified of the time and place of the exam by NCEES. An applicant who wishes to reschedule an exam other than the Fundamentals of Engineering exam, shall pay an exam reschedule fee to the board.~~

~~(4) (5) A passing grade set by the National Council of Examiners for Engineering and Surveying (NCEES) NCEES will be required.~~

~~(5) (6) A candidate failing to pass any examination exam, other than the Fundamentals of Engineering exam, may take that examination again upon payment of the reexamination fee specified by ARM 24.183.404.~~

~~(6) (7) The examinee who has failed the Montana law state specific examination may review the examination in the board office within 60 days after being notified of the status. Note taking will be allowed during the time of review, but the notes must be left in the board office. An examinee who fails the Montana state-specific land surveyor exam may request a diagnostic report on the exam results within 60 days after the date of notification of the failure.~~

~~(7) The Montana law state specific examination will be retained in the examinee's file for a period of one year, and then destroyed.~~

AUTH: 37-1-131, 37-67-202, MCA

IMP: 37-1-131, 37-1-134, 37-67-311, MCA

REASON: The board recently decided to allow examinees for the NCEES Fundamentals of Engineering exam to register directly with NCEES without prior

approval by the board. The board determined it is reasonably necessary to amend this rule to comport with a 2013 letter of agreement with NCEES regarding the provision of examination services. The board is also responding to requests that access to the FE exam be expanded to candidates the board previously did not approve. The board intends for this rule to clearly state which examinees must be approved by the board prior to the exam, and those who may register directly with NCEES. By doing so, the board's standards will not be subject to sudden, frequent, or arbitrary change through board policies or motions.

The board is amending (7) to adjust post-exam procedures for examinees who fail the board's new state-specific land surveyor exam, which was approved at the board's November 2013 meeting. Following amendment, examinees who fail the state exam will not be able to review their exam, but instead will receive a diagnostic report showing their performance per subject area. The board concluded that allowing examinees to review specific failed exam questions, with the opportunity to retake the same exam, is too lenient. The board also believes it is reasonable to adopt a review process similar to the NCEES post-exam procedure.

Finally, the board is deleting old (7) to eliminate the requirement to retain state-specific exams for one year prior to destruction. This change will allow the department to dispose these exams under normal records retention schedules.

24.183.510 GRANT AND ISSUE LICENSES AND CERTIFICATES (1) At the time an applicant ~~has met~~ meets the requirements for licensure by the board, the applicant will be assigned a license number and issued a license as a professional engineer and/or professional land surveyor as appropriate. These numbers will be issued consecutively in the order in which the applications are approved by the board. The applicant will be advised of the license number in the notice sent to the applicant.

(2) The engineer intern ~~license~~ certificate will be ~~valid for six~~ active for two years and may be renewed for additional two-year periods for a fee prescribed in ARM 24.183.404. ~~Upon termination of the license, the board will dispose of the application according to department policy.~~ Pursuant to an agreement with the National Council of Examiners for Engineering and Surveying (NCEES), the board has agreed to retain examination scores. Upon request, the individual may obtain the national exam score and verification for a fee prescribed by the ~~board~~ department.

(3) The land surveyor intern certificate will be valid for two years and may be renewed for additional two-year periods for a fee prescribed in ARM 24.183.404.

~~(3)~~ (4) A license authorizing the practice of professional engineering or professional land surveying by a sole proprietorship, firm, partnership, or corporation ~~will~~ shall be granted by the board and issued by the department after approval of an application for a certificate of authorization and payment of the license fee. A will certificate shall be signed by the presiding officer ~~and the secretary~~ and shall bear the license number of the licensee, sole proprietorship, firm, partnership, or corporation.

(5) All licenses and certificates identified through this rule shall be subject to lapse, expiration, and termination under 37-1-141, MCA, and ARM 24.101.413.

AUTH: 37-1-131, 37-67-202, MCA
IMP: 37-67-305, 37-67-306, 37-67-307, 37-67-308, 37-67-309, 37-67-320,
MCA

REASON: The board determined it is reasonably necessary to amend this rule to use the term "certificate," instead of "license," and align with relevant statutes in Title 37, chapter 67, part 3, MCA. Interns are not issued licenses to practice, but instead receive certificates that recognize passage of the appropriate fundamentals exams and evidence of additional intern qualifications.

The board determined it is reasonably necessary to amend (2) and add (3) to create two-year renewable certificates for both EIs and LSIs. Currently LSI certificates have a perpetual life and EI certificates were perpetual until 2012 when the board changed them to a six-year length with no renewal. This amendment addresses numerous communications from EIs whose certificates had terminated and who were concerned the termination would adversely affect their ability to work in engineering firms or apply for professional licensure. The board concluded that it is reasonable to allow renewal for both EI and LSI certificates, and selected a 2-year cycle to be consistent with the renewal periods of licensed engineers and land surveyors.

The board is removing the requirement for the board secretary to sign wall certificates issued to new licensees, as the board concluded that the presiding officer's signature is adequate.

The board is adding (5) following a suggestion by staff that such a reminder, especially with the implementation of intern renewals, will address any questions and clarify that certificates are treated the same as licenses when it comes to renewal.

24.183.701 COMITY CONSIDERATION FOR PROFESSIONAL ENGINEERS (1) The board may, upon receipt of an application and payment of proper fee, issue a license as a professional engineer, to any person who submits a national council record issued to the person by proper authority of the National Council of Examiners for Engineering and Surveying (NCEES), or verification of licensure from any state or territory or possession of the United States, or any country, provided that the applicant's qualifications meet the requirements of the law and of the rules established by the board. Such applicants shall, as part of their application, complete and send to the department the standard application form. Applicants who have a current council record must complete only the following sections of the application for registration as a professional engineer: Applicants shall submit to the department, either electronically or by mail, the department-approved application form with the appropriate fee and a completed engineer laws and rules questionnaire.

~~(a) general information;~~

~~(b) licensure in other states;~~

~~(c) affidavit; and~~

~~(d) a completed engineer laws and rules questionnaire.~~

(2) Applicants with a National Council of Examiners for Engineering and Surveying (NCEES) record may arrange for NCEES to deliver their most current

record directly to the board office. An applicant with a current NCEES record is not required to submit references or educational transcripts.

~~(2) (3) Professional engineers applying by comity without an a NCEES record are required to complete all sections of the application. The following are also required shall submit to the department, either electronically or by mail, the department-approved application form with the appropriate fee and the following:~~

- ~~(a) educational transcripts;~~
- ~~(b) five completed reference forms as required by ARM 24.183.503; and~~
- ~~(c) verification of taking and licensure from all states and verification of passing both the fundamentals Fundamentals of engineering Engineering (FE) examination and principles the Principles and practice Practices of engineering Engineering (PPE) examination, from the state of original licensure; and~~
- ~~(d) a completed engineer laws and rules questionnaire.~~

AUTH: 37-67-202, MCA

IMP: 37-1-304, 37-67-312, MCA

REASON: The board is amending this rule to clearly and separately set forth the application requirements for those professional engineers seeking licensure by comity who hold or do not hold NCEES records. In the proposed amendments, the board is altering and clarifying the documentation that NCEES-holders need not provide, and concluded that reorganizing this rule will help accomplish this.

The board is also amending this rule to require all comity applicants to submit complete Montana applications, including experience forms. The board determined that the NCEES record does not adequately evaluate progressive experience since the record contains experience dates, but no information as to quality of the experience. The board notes that progressive experience is required under 37-67-306, MCA.

The board is amending (1) to remove the ability of licensure by comity for engineers licensed in countries other than the United States. The board believes that the method of licensing professional engineers in the United States is superior to that of other countries by virtue of the rigor of educational standards and exams. Following years of frustration and discussion, the board has now crafted rule language that matches their intent in this area of licensure. The board concluded that engineers licensed in other countries who have not passed the NCEES PE exam must apply as exam candidates and pass that exam for licensure.

The board is amending (3) to clearly reflect in rule the current application requirement of verification of licensure in other states. To reflect the reality that engineers may have taken the FE exam in one state and the PPE in another, the board is amending (3) to no longer require comity applicants without NCEES records to submit proof of passing these exams in their states of original licensure. The board notes that this practice will become more common with the new computer-based FE exam and concluded that it is not necessary to limit licensure to only those applicants who took both exams in their first licensing states.

24.183.702 CLASSIFICATION OF ENGINEERING EXPERIENCE

(1) Engineering experience for the purpose of application for licensure shall include be classified as the following:

(a) Subprofessional experience is experience gained before graduation receipt of a baccalaureate degree. This Such experience may be gained during periods of college or university enrollment, and shall be credited to the required preprofessional experience at a maximum of one-half the period of experience at one-half the time value of preprofessional experience gained after receipt of a baccalaureate degree. Subprofessional experience shall be limited to no more than one year of preprofessional experience. No more than one year of subprofessional experience may be counted as preprofessional experience. Credible subprofessional Such preprofessional experience may include one or more of the following:

(i) supervised engineering experience, supervised; or

(ii) supervised construction experience, supervised.

(b) Preprofessional experience is four years of total progressive experience, all of which is required to be completed at the time of application. Credible gained following receipt of a baccalaureate degree. Such preprofessional experience may include:

(i) approved no more than one year of subprofessional experience as defined in (a);

(ii) through (vi) remain the same.

(vii) successful completion of graduate study leading to the a master's degree in engineering, which has followed a baccalaureate degree in engineering, as credit for will be credited as one year's year of experience; If the Ph.D. in engineering is completed under the same conditions, two year's total experience may be credited, including the one year credited for the master's degree, in the two year's total. If the Ph.D. is obtained without the master's degree, two year's experience may be credited.

(viii) a Ph.D. in engineering will be credited as two years of experience, but the applicant shall not count an additional one year for a master's degree, if earned. All degrees shall have been obtained from colleges or universities with board-approved programs.

(c) Professional experience is gained after initial licensure by a state, territory, or possession of the United States.

(2) Experience All experience must be completed at the time of application. Experience time cannot be counted during periods counted for education.

(3) Experience should be gained under the supervision of a registered professional engineer or and, if not, an explanation should be made showing why the experience should be considered acceptable.

(4) Upon request by the board, an applicant must demonstrate knowledge of fundamental principles of engineering design and the practical solution of engineering problems. Engineer applicants may be asked by the board to provide a more detailed explanation of their knowledge of fundamental principles of engineering design and the practical solution of engineering problems.

AUTH: 37-67-202, MCA

IMP: 37-67-305, 37-67-306, 37-67-309, MCA

REASON: The board determined that the current wording and organization of this rule is confusing for applicants, licensees, and board members as well. Therefore, the board is amending the rule throughout to more clearly delineate and explain the classifications of engineering experience.

The board is adding (1)(c) to further clarify for PE by comity applicants and staff how required experience is broken down and what kinds of experience fit into which categories.

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

24.183.801 COMITY CONSIDERATION FOR PROFESSIONAL LAND SURVEYORS (1) ~~Licensed land surveyors from any state or territory or possession of the United States, or of any country, can apply for comity consideration. Comity applicants shall meet the minimum requirements of the law and rules established by the board. Applicants shall complete and send to the department the standard application and appropriate fees based on one of~~ The board may, upon receipt of application and payment of proper fee, issue a license as a professional land surveyor to any person who submits verification of licensure from any state or territory or possession of the United States. All applicants shall complete and submit, either electronically or by mail, the department-approved application form with the appropriate fee, and a completed land surveyors laws and rules questionnaire, and the following:

(a) college or university transcripts, when applicable;
(b) five completed reference forms as required by ARM 24.183.503; and
(c) verification of licensure from the state of original licensure, including verification of passing both the Fundamentals of Land Surveying examination and Principles and the Practices of Land Surveying examination.

~~(a) (2) Applicants who have a current National Council of Examiners for Engineering and Surveying (NCEES) record must request a copy of their record be sent to the board office. In addition, they must complete only the following sections of the application for licensure as a professional land surveyor: may arrange for NCEES to deliver their most current record directly to the board office.~~

~~(i) general information;~~
~~(ii) licensure in other state;~~
~~(iii) affidavit; and~~
~~(iv) the land surveyor laws and rules questionnaire.~~
~~(b) If the comity applicant does not have a NCEES record, the entire application must be completed and submitted. The applicant shall submit the following within three months of the boards' receipt of a completed application:~~
~~(i) college or university transcripts when applicable;~~
~~(ii) five completed reference forms as required by ARM 24.183.503;~~
~~(iii) verification of licensure from state of original licensure which includes verification of passing the fundamentals of land surveying and principles and practices of land surveying examinations; and~~
~~(iv) the land surveyors laws and rules questionnaire.~~

~~(2) (3) Once approved~~ Upon approval of the application by the board, all the comity applicants shall pass a closed book, state-specific, land surveying examination with a score of 70 percent or more.

AUTH: 37-67-202, MCA

IMP: 37-1-304, 37-67-313, MCA

REASON: The board is amending this rule to clarify the application requirements for professional land surveyors seeking licensure by comity, and is reorganizing this rule to facilitate this.

The board is also amending this rule to require all land surveyor comity applicants to submit complete Montana applications, including experience forms. The board does not consider the content of NCEES records as equivalent to the information provided through the department's license application forms. The board also concluded that the NCEES record does not adequately evaluate progressive experience since the record contains dates of experience, but no information as to quality of the experience. The board notes that progressive land surveying experience is required under 37-67-309, MCA.

The board is amending (1) to remove the ability of licensure by comity for land surveyors licensed in countries other than the United States. The board believes that the method of licensing professional land surveyors in the United States is superior to that of other countries by virtue of the rigor of educational standards and exams. Following years of frustration and discussion, the board has now crafted rule language that matches their intent in this area of licensure. The board concluded that land surveyors licensed in other countries who have not passed the NCEES PLS exam must apply as exam candidates and pass that exam for licensure.

The board is also amending (2) to no longer accept certain ancillary documents to be submitted within three months of the application submission. The board is unsure why this process was ever in place, and notes that applications would never be considered complete without these documents. This change also aligns with licensure procedures of the department and will help to simplify and streamline processing of applications.

The board is amending (3) to set forth the minimum score to pass the state-specific land surveying exam. The board determined that 70 percent is an appropriate passing score for this new exam the board recently approved, and notes that the passing score is already stated on the exam materials.

24.183.802 CLASSIFICATION OF EXPERIENCE FOR LAND SURVEYING APPLICANTS ~~(1) Land surveying experience shall include the following:~~

~~(a) preprofessional experience of four years of total progressive experience, gained under the supervision of a licensed professional land surveyor, all of which is required to be completed at the time of application. Land surveying experience must include a substantial portion spent in charge of work related to property conveyance and/or boundary line determination. Credible experience may include one or more of the following:~~

~~(i) approved preprofessional experience;~~

~~(ii) progressive experience on land surveying projects which indicate the experience is of increasing quality and required greater responsibility;~~

~~(iii) experience not obtained in violation of the licensure act;~~

~~(iv) experience such as aliquot part subdivision of sections, retracing existing boundaries, establishing new boundaries, corner search and reestablishment, researching existing public records, survey computations, preparation of legal descriptions, certificates of survey, subdivision plats, corner recordation forms, exhibits and other documents pertinent to such work; or~~

~~(v) credible teaching experience at an advanced level, post graduate or senior graduate, in a college or university offering a land surveying curriculum approved by the board, gained under the supervision of a licensed land surveyor.~~

~~(2) Experience time cannot be counted during periods counted for education.~~

~~(3) Upon request by the board, land surveyor applicants must demonstrate adequate experience in the field aspects of the profession.~~

~~(4) Subprofessional experience shall be credited to the required preprofessional experience at a maximum of one-half the period of experience. Subprofessional experience shall be limited to no more than two years of preprofessional experience. Credible subprofessional experience may include one or more of the following:~~

~~(a) approved subprofessional experience;~~

~~(b) survey experience done under the supervision of a licensed professional land surveyor, including such work as:~~

~~(i) construction layout of buildings and miscellaneous structures;~~

~~(ii) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;~~

~~(iii) construction staking for land modification; and~~

~~(iv) construction staking for highways, roads, utilities, etc.;~~

~~(c) other construction surveying experience supervised by a licensed professional land surveyor; or~~

~~(d) other surveying experience supervised by a licensed professional land surveyor.~~

(1) Land surveying experience for the purpose of application for licensure shall be classified as progressive and non-progressive.

(2) Non-progressive experience must be gained under a licensed land surveyor and may include:

(a) construction layout of buildings and miscellaneous structures;

(b) surveys necessary to obtain data and location of highways, roads, pipelines, canals, etc.;

(c) construction staking for land modification, highways, roads, utilities, etc.;

or

(d) other construction surveying experience.

(3) Non-progressive experience shall be credited at one-half the time value of progressive experience and shall be limited to a total of no more than two years.

(4) Progressive experience is experience gained under the supervision of a licensed professional land surveyor and may include one or more of the following:

(a) experience on land surveying projects, which indicate the experience is of increasing quality and requiring greater responsibility;

- (b) experience not obtained in violation of the licensure act;
- (c) experience such as aliquot part subdivision of sections, retracing existing boundaries, establishing new boundaries, corner search and reestablishment, researching existing public records, survey computations, preparation of legal descriptions, certificates of survey, subdivision plats, corner recordation forms, exhibits, and other documents pertinent to such work; or
- (d) experience teaching surveying subjects at an advanced undergraduate or postgraduate level in an accredited college or university offering a land surveying curriculum supervised by a licensed land surveyor.
- (5) All experience must be completed at the time of application.
- (6) Land surveyor applicants may be asked by the board to provide a more detailed explanation of their experience in the field aspects of the profession.

AUTH: 37-67-202, MCA

IMP: ~~37-67-306~~, 37-67-308, 37-67-309, MCA

REASON: The board is amending this rule to clarify experience definitions and limitations and accurately reflect what the board determined must be provided on both professional land surveyor and land surveyor intern applications. The current rule is both poorly organized and contains experience levels copied from those of professional engineers. As such, the current rule does not address the types or levels of experience gained by applicants in the land surveying profession. The amended rule will make land surveying experience more understandable to applicants, department staff, and board members alike. Implementation citations are amended to accurately reflect all statutes implemented through the rule.

24.183.1001 FORM OF CORNER RECORDS - INFORMATION TO BE INCLUDED (1) ~~The form for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) has been approved by the board of professional engineers and land surveyors. The approved version of the form for public land survey system was adopted by the board on July 1, 1981, and the approved version of the form for filing under the survey of record index was adopted on February 20, 2004. Blank corner record forms can be obtained from the Montana Association of Registered Land Surveyors, P.O. Box 359, Columbia Falls, Montana 59912, by contacting the association directly at (406) 892-4579, or on the internet at www.marls.com. The board-approved form for public land survey system corners and the board-approved form for non-public land survey system corners for recordation of corners pursuant to the Corner Recordation Act of Montana (Title 70, chapter 22, part 1, MCA) are available on the board web site.~~

~~(2) The information to be included in a corner record is as follows:~~

~~(a) A description or quotation of those portions of the original or subsequent record which were used in evaluating the corner position.~~

~~(i) The original record for corners of government surveys will usually be the general land office field notes.~~

~~(ii) The original record for nongovernment surveys will usually be subdivision plats, certificates of survey or other surveys of record.~~

~~(iii) Subsequent record can come from sources such as previously filed corner records, maps and plats, private and public records, etc. Some of the subsequent record, even though not in the public record, but known to have validity by the surveyor, may be quoted and appropriately noted. The record data help support the reestablished corner position because they clearly show on what history the surveyor based the corner position. In some cases, however, the record may be unknown or not pertinent. A statement to that effect, if applicable, must appear on the corner record.~~

~~(b) A description of the original or subsequent record evidence found that locates the corner position.~~

~~(i) If portions of the found evidence cannot be reconciled with the record, then the disregarded record must be noted, and if possible, an opinion as to its cause narrated.~~

~~(ii) If no physical evidence of the original or subsequent monuments and accessories can be found, then the method used to reestablish the lost or obliterated corner (single proportion, fence intersection, parol evidence, terrain calls, centerline of road, etc.) shall be indicated.~~

~~(iii) Measurements used to establish proportioned positions must be shown on the corner recordation form or on a filed certificate of survey or subdivision plat referenced on the recordation form.~~

~~(c) A listing of all details about the corner and its location which will help exclusively identify the corner position, including size and type of monument and accessory, how marked if not shown in sketch, and distinguishing topographic calls which help locate the corner. In many cases, instructions on how to find the corner should be included.~~

~~(i) For public land survey system corners requiring recordation, sufficient information must be shown on the form to enable subsequent surveyors to verify the corner position identified on the form, and to reestablish the corner position if the monument is obliterated. Ideally, the references will be to at least two identifiable accessories or surveyed dimensions to two survey monuments.~~

~~(ii) References or ties to other corners are optional and may be drawn on the face or back of the corner record form, or references to certificate of survey may be made. Separate drawings may be attached to the corner form. If state plane coordinate values for the corner position are shown, then the control upon which they are based should be indicated.~~

~~(d) A sketch of the corner to show how a found or set corner is marked or show topography or accessory monuments found or set and their relation to the corner. There is no stipulated format; the sketch could be transcribed field note entries. For corners which were first shown on subdivision plats or on recorded or filed surveys, enough information must be shown so that the corner can be identified.~~

~~(e) The surveyor who performed or directed the field work which is depicted on the corner record shall sign and affix the licensee's seal in the certification.~~

~~(i) The affixing of the licensee's seal constitutes a certification by the surveyor that the corner record has been prepared in conformance with the Corner Recordation Act of Montana and the rules implementing the Act.~~

~~(ii) The employer blank is optional but useful in tracking down original field note data or adjacent record if, in the future, questions arise about the corner. The name and signature of the ground party chief is also optional information on the record form.~~

~~(f) For public land survey system corners, the cross index at the bottom of the page must be completed by the surveyor. Only the single township and range index where the corner is filed is to be completed.~~

~~(i) For corner records to be filed under the survey of record index, the index information must be filled in as completely as possible by the surveyor and made clear the name and number(s) of the recorded survey and the lot or parcel designation. The corner location diagram must have the pertinent section number filled in and a closed circle indicating the appropriate corner position in the section. This is intended to be an aid in searching the record once it has been filed.~~

AUTH: 37-67-202, 70-22-107, MCA
IMP: 70-22-107, MCA

REASON: The board is amending (1) to inform the land surveying community that the forms on corner records are available on the board's web site.

Because (1) references the Corner Recordation Act of Montana, which contains all the standards for the record form, the board is deleting (2) as it unnecessarily repeats these same standards.

24.183.1101 UNIFORM STANDARDS FOR MONUMENTATION

(1) remains the same.

(a) The terms "monument" and "permanent monument" as used in these regulations mean any structure of masonry, metal, or other permanent, durable material placed in the ground, which is exclusively identifiable as a monument to a survey point, expressly placed for surveying reference.

(b) remains the same.

(c) Before a subdivision plat or certificate of survey may be filed for record, the surveyor shall confirm the location of as many monuments as, in the surveyor's professional judgment, are necessary to reasonably assure the perpetuation of any corner or boundary established by the survey and to enable other surveyors to reestablish those corners and boundaries and retrace the survey. The surveyor shall clearly identify on the face of the plat or certificate of survey all monuments pertinent to the survey, and the descriptions of these monuments must be sufficient to identify the monuments.

(d) The surveyor shall set all monuments prior to the filing of a plat or certificate of survey, except those monuments that will be disturbed by the installation of improvements, or that, because of severe weather conditions, may, in the surveyor's judgment, be more appropriately and accurately set after the weather has improved. In these two circumstances the surveyor may set monuments after the survey document is filed if the surveyor certifies on the survey document that the monuments will be set by a specified date. The surveyor shall set monuments, the placement of which has been deferred because of severe weather conditions, within 240 days of the date on which the survey document was filed.

(i) through (e) remain the same.

(i) ~~At~~ at each corner and angle point of all lots, blocks, and parcels of land created by the survey;

(ii) ~~At~~ at every point of intersection of the outer boundary of a subdivision with an existing road right-of-way line of record or a road right-of-way line created by the survey;

(iii) ~~At~~ at every point of curve, point of tangency, point of reversed curve, point of compounded curve, and point of intersection on each road right-of-way line created by the survey; and

(iv) ~~At~~ at the intersection of a boundary line and a meander line. Meander line angle points need not otherwise be monumented.

(f) remains the same.

(g) If the land surveyor sets a monument that is on, is a part of, and controls a property line, then the surveyor shall file a certificate of survey which complies with the requirements of ARM 24.183.1104. Alternatively, the surveyor may file a corner record in lieu of a certificate of survey pursuant to 70-22-105(2), MCA.

(2) Remonumentation of public land survey corner monuments shall conform to (NEW RULE I).

AUTH: 76-3-403, MCA

IMP: 76-3-403, MCA

REASON: The board is adding (1)(g) to prevent improper setting/resetting of monuments and provide guidance on proper procedures for monumentation and remonumentation. This amendment will create a new requirement to file a certificate of survey when a monument is set in relation to a property line. The board believes this new requirement will eliminate long-standing confusion over whether certificates of survey are required in these instances.

It is reasonably necessary to add (2) to ensure that land surveyors are aware of the proposed new rule on remonumentation and rehabilitation of public land survey corners and monuments, and the need to comply with its provisions.

The board is amending grammar and punctuation throughout this rule to comply with formatting requirements of the Secretary of State.

24.183.1107 UNIFORM STANDARDS FOR FINAL SUBDIVISION PLATS

(1) through (2)(e)(xiv) remain the same.

(xv) except as provided in (2)(~~e~~)(e)(xiii) and (xiv), the location, bearings, distances, curve data, and areas of all parks, common areas, and other grounds dedicated for public use;

(xvi) through (5) remain the same.

AUTH: 37-67-202, 76-3-403, 76-3-411, MCA

IMP: 37-67-314, 76-3-101 through 76-3-105, 76-3-201, 76-3-203, 76-3-205, 76-3-206, 76-3-207, 76-3-209, 76-3-301 through 76-3-307, 76-3-401 through 76-3-406, 76-3-411, MCA

REASON: This amendment is necessary to correct a typographical error from MAR 24-183-39A that was not discovered until after final publication of the amended rule. Since there are no subordinate sections of (2)(d) in this rule, the correct reference is to (2)(e).

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

5. The proposed new rules provide as follows:

NEW RULE I REMONUMENTATION AND REHABILITATION OF PUBLIC LAND SURVEY CORNERS AND MONUMENTS (1) The legal importance of the public land survey corner makes mandatory the construction of lasting monuments and accessories such that the greatest practicable permanence is secured. If it were necessary to alter the condition of a public land survey corner, then preserving the evidence of its original location is paramount. The public land survey corner monument should be carefully reconstructed (rehabilitated) or remonumented by such means as may be appropriate, without destroying the evidence which served to identify its original position.

(a) If a public land survey corner monument were to be rehabilitated only, then the monument shall primarily be restored as closely to its original state as practicable.

(b) If a public land survey corner monument were to be replaced with a more durable monument (remonumentation), then the following steps shall be performed:

(i) recovery and verification of the public land survey corner monument and/or its accessories;

(ii) removal of the public land survey corner monument and replacement with a monument conforming to ARM 24.183.1101;

(iii) placement and memorialization of the replacement monument so that there is only one monumented position. Unless local conditions are prohibitive, the public land survey corner monument being replaced shall be buried upside down alongside the replacement monument; and

(iv) remonument according to the procedures describing monumentation in the most current edition of the U.S. Bureau of Land Management Manual of Surveying Instructions.

(c) If a reference or accessory to a public land survey corner monument were lost, obliterated, destroyed, or in advanced stages of decay, then the following steps shall be performed:

(i) unless prohibitive, placement of a reference or accessory conforming to the most current edition of the U.S. Bureau of Land Management Manual of Surveying Instructions;

(ii) if practical, placement of references and accessories far enough from the corner monument to remain undisturbed if the corner monument itself were destroyed; and

(iii) marking of references and accessories clearly distinguishing them from the corner monument.

(d) If required by 70-22-104, MCA, a "PLSS Corner Record" form shall be completed pursuant to ARM 24.183.1001 and filed with the county clerk and

recorder for the public land survey corner monuments and accessories described in (1)(a), (b), and (c).

AUTH: 37-67-202, 70-22-107, MCA
IMP: 76-3-403, MCA

REASON: The board determined it is reasonably necessary to adopt New Rule I to establish standards for the proper replacement or rehabilitation of land survey monuments. Following recommendations of a professional land surveyor board member, the board agreed that repairing or replacing land surveying monuments is an important task in land surveying, and may often be done poorly. The board also noted that having no clear published standards for remonumentation likely causes confusion and poor practices in the land surveying community.

NEW RULE II ENGINEERING SERVICES INCIDENTAL TO THE PRACTICE OF ARCHITECTURE (1) The performance of engineering services that are incidental to a licensee's work as an architect are those services which:

- (a) can be safely and competently performed by the licensee without jeopardizing the life, health, property, and welfare of the public;
 - (b) are in an area where the licensee has demonstrated competence by adequate education, training, and experience;
 - (c) arise from, and are directly related to, work performed in the licensed profession;
 - (d) are substantially less in scope and magnitude when compared to the work performed or to be performed by the licensee in the licensed profession; and
 - (e) comply with all of the laws of Montana relating to the practice of engineering.
- (2) Architects performing incidental practice as stated in (1) shall:
- (a) perform only that part of the work for which the architect is professionally qualified;
 - (b) use professional engineers or other appropriately licensed professionals for those portions of the work in which the architect is not qualified;
 - (c) assume responsibility for compliance with all laws, codes, rules, and ordinances of the state or its political subdivisions pertaining to the documents; and
 - (d) not hold himself/herself out to be an engineer or as performing engineering services.

AUTH: 37-67-202, MCA
IMP: 37-67-103, MCA

REASON: The board is proposing this new rule following several years of discussion, development, and approval by a joint committee of the board and the Board of Architects and Landscape Architects. Pursuant to 37-67-103(4), MCA, licensed architects are able to practice engineering without obtaining a professional engineering license from the board only when the engineering work is purely incidental to their practice of architecture. The board intends for this new rule to

further clarify when licensed architects may do engineering work that is only incidental to the practice of architecture.

NEW RULE III EXHIBITS OF LAND SURVEYING PROJECTS (1) An applicant for licensure as a land surveyor shall submit no less than two and no more than four exhibits of land surveying projects demonstrating the diversity of the applicant's experience. A minimum of one exhibit shall demonstrate the applicant's knowledge of the principles and practices of boundary surveying.

(2) An applicant shall submit a written narrative describing each exhibit and the applicant's responsibilities and professional decision-making processes related to the land surveying project.

(3) An applicant applying for certification as a land surveyor intern under 37-67-310(1) and (2), MCA, is exempt from this requirement.

AUTH: 37-67-202, MCA

IMP: 37-67-308, MCA

REASON: The board is proposing this new rule to establish the number of exhibits required for professional land surveyor and land surveyor intern applicants for licensure to demonstrate experience in land surveying. Currently, there is no minimum number of exhibits required, nor is there a maximum, which leads applicants to submit fewer or more than the board finds useful. Those applicants for land surveyor intern who apply with only education and no experience are exempt under (3).

NEW RULE IV UNPROFESSIONAL CONDUCT (1) In addition to those forms of unprofessional conduct defined in 37-1-316, MCA, the following is unprofessional conduct for a licensee or license applicant under Title 37, chapter 67, MCA:

(a) conviction, including conviction following a plea of nolo contendere of an offense related to the ethical practice of engineering or land surveying, whether a misdemeanor or felony, and whether or not an appeal is pending;

(b) fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing a license or license renewal; or in taking an examination required for licensure, as used herein, "material means any false or misleading statement or information";

(c) conduct in the performance of professional duties likely to deceive, defraud, or harm the public;

(d) making a false or misleading statement regarding the licensee's skill, experience, and scope of responsibility in connection with work for which they are claiming experience and performance of professional duties;

(e) failing to be objective and truthful in professional reports, statements, and testimony;

(f) publicly expressing a professional opinion on technical subjects when the opinion is not founded upon adequate knowledge of the facts and competence in the subject matter;

(g) issuing a statement, criticism, or argument on technical matters which are inspired by or paid for by interested parties, unless the licensee prefaces the comments by explicitly identifying the interested parties on whose behalf they are speaking and by revealing the existence of any interest the licensee may have in the matter;

(h) allowing the licensee's independent and professional judgment to be influenced in such a way that public safety, health, property, or welfare is endangered;

(i) approving and/or sealing design documents and surveys which do not conform with accepted engineering and land surveying standards, and which are thus unsafe for public health, property, and welfare;

(j) affixing a signature or seal to any plans or documents outside the competence of the licensee and not prepared under their responsible charge;

(k) failing to report professional misconduct and violation of the laws and rules of the board which are directly known to the licensee failing to report;

(l) failing to disclose known or potential conflicts of interest to a licensee's employers and clients by promptly informing them of any business association, interest, or other circumstances which could influence the licensee's judgment or quality of their services;

(m) accepting compensation, financial or otherwise, from more than one party for services on the same project, or for services pertaining to the same project, unless the circumstances are fully disclosed to, and agreed upon by all interested parties;

(n) soliciting or accepting financial or other valuable consideration, directly or indirectly, from material or equipment suppliers or contractors in exchange for recommending the products of said suppliers or contractors, except with full disclosure;

(o) soliciting or accepting financial or other valuable consideration such as gratuities, gifts, travel, lodging, loans, entertainment, or other favors, directly or indirectly from contractors, their agents, or other parties in connection with work by the licensee or for the licensee's employers or clients for which the licensee is responsible;

(p) accepting a fee, contract, or commission for professional services on a "contingency basis," which may compromise the licensee's professional judgment;

(q) participating in decisions, with respect to professional services solicited or provided to a governmental body or organization, on which the licensee serves as a member, advisor, or employee;

(r) soliciting or accepting a professional contract from a governmental body on which a principal or officer of the licensee's employer serves as member, except upon public disclosure of all pertinent facts and circumstances and consent of the appropriate public authority;

(s) knowingly seeking or accepting employment for professional services for work on which another licensee or certificate holder is employed, or contracted to perform without the currently employed or contracted licensee or certificate holder being informed in writing; and

(t) knowingly attempting to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice, or employment of other licensees or indiscriminately criticizing other licensees' work.

AUTH: 37-1-319, 37-67-202, MCA
IMP: 37-1-316, 37-67-331, 37-67-332, MCA

REASON: The board is proposing New Rule IV to combine its several rules on unprofessional conduct into a single, comprehensive rule. Additionally, the board has added provisions found in NCEES model rules, as well as provisions used by other Montana licensing boards to what is considered by the board to be unprofessional conduct for licensees and license applicants. The board believes that by having one unified and comprehensive rule on unprofessional conduct, its ability to evaluate complaints brought against licensees and applicants will be made more efficient and less confusing.

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

24.183.2201 INTRODUCTION

AUTH: 37-1-319, 37-67-202, MCA
IMP: 37-67-301, 37-67-331, MCA

REASON: The board determined it is reasonably necessary to repeal ARM 24.183.2201, 24.183.2203, 24.183.2204, 24.183.2205, and 24.183.2206, as the board is incorporating their relevant provisions into proposed NEW RULE IV on unprofessional conduct.

24.183.2203 PERFORMANCE OF SERVICES ONLY IN AREAS OF COMPETENCE

AUTH: 37-1-319, 37-67-202, MCA
IMP: 37-1-316, 37-67-301, MCA

24.183.2204 CONFLICTS OF INTEREST

AUTH: 37-1-319, 37-67-202, MCA
IMP: 37-1-316, 37-67-301, MCA

24.183.2205 AVOIDANCE OF IMPROPER SOLICITATION OF PROFESSIONAL EMPLOYMENT

AUTH: 37-1-319, 37-67-202, MCA
IMP: 37-1-316, 37-67-301, 37-67-331, MCA

24.183.2206 ISSUANCE OF PUBLIC STATEMENTS

AUTH: 37-67-202, MCA
IMP: 37-1-316, 37-67-301, MCA

7. 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 Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibsdpels@mt.gov, and must be received no later than 5:00 p.m., July 25, 2014.

8. An electronic copy of this notice of public hearing is available at www.engineer.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.

9. 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 Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdpels@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

11. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.183.301, 24.183.402, 24.183.501, 24.183.503, 24.183.509, 24.183.510, 24.183.701, 24.183.702, 24.183.801, 24.183.802, 24.183.1001, and 24.183.1107 will not 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 24.101.413, 24.183.404, and 24.183.1101 will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES II, III, and IV will not significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULE I will significantly and directly impact small businesses.

With regard to the requirements of 2-4-111, MCA, the board has determined that the repeal of ARM 24.183.2201, 24.183.2203, 24.183.2204, 24.183.2205, and 24.183.2206 will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request from the Board of Professional Engineers and Professional Land Surveyors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; fax (406) 841-2305; or e-mail dlibsdpels@mt.gov.

12. Ian Marquand, Executive Officer, has been designated to preside over and conduct this hearing.

BOARD OF PROFESSIONAL ENGINEERS
AND PROFESSIONAL LAND SURVEYORS
DAVID ELIAS, ENGINEER SURVEYOR,
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 June 16, 2014

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through IX, the amendment of	)	PROPOSED ADOPTION,
ARM 37.110.201, 37.110.238,	)	AMENDMENT, AND
37.110.239, 37.110.243, and the	)	REPEAL
repeal of ARM 37.110.202,)	
37.110.203, 37.110.204, 37.110.206,)	
37.110.207, 37.110.208, 37.110.209,)	
37.110.210, 37.110.212, 37.110.213,)	
37.110.214, 37.110.215, 37.110.216,)	
37.110.217, 37.110.218, 37.110.219,)	
37.110.220, 37.110.221, 37.110.222,)	
37.110.223, 37.110.225, 37.110.226,)	
37.110.227, 37.110.228, 37.110.229,)	
37.110.230, 37.110.231, 37.110.232,)	
37.110.236, 37.110.240, 37.110.241,)	
37.110.242, 37.110.252, 37.110.253,)	
37.110.254, 37.110.255, 37.110.256,)	
37.110.257, 37.110.258, and)	
37.110.259 pertaining to updating the)	
Montana retail food establishment)	
rules)	

TO: All Concerned Persons

1. On July 21, 2014, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on July 14, 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 adopted provide as follows:

NEW RULE I INCORPORATION BY REFERENCE (1) The Department of Public Health and Human Services (department), except as otherwise provided in this chapter, adopts and incorporates by reference the following publication: "Food Code, 2013, Recommendations of the United States Public Health Service, Food and Drug Administration" published by National Technical Information Service, Publication PB2013-110462, ISBN 978-1-935239-02-4, November 3, 2013. This publication may be reviewed online at: <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm374275.htm>; or by contacting DPHHS-FCSS, 1400 Broadway Street, Helena, MT 59620. This publication is being adopted with modifications and additions as described in [New Rule I through IX].

(a) Chapter 1: Purpose and Definitions. Additions and modifications have been made to this chapter as described in [New Rule II].

(b) Chapter 2: Management and Personnel. Additions have been made to this chapter as described in [New Rule III].

(c) Chapter 3: Food. This chapter has been adopted with no modifications.

(d) Chapter 4: Equipment, Utensils, and Linens. This chapter has been adopted with no modifications.

(e) Chapter 5: Water, Plumbing, and Waste. Additions have been made to this chapter as described in [New Rule VI].

(f) Chapter 6: Physical Facilities. An addition has been made to this chapter as described in [New Rule VII].

(g) Chapter 7: Poisonous or Toxic Materials. This chapter has been adopted with no modifications.

(h) Chapter 8: Compliance and Enforcement. Additions and modifications have been made to this chapter as described in [New Rule IX].

(i) Annexes 1 through 7 of the "Food Code, 2013, Recommendations of the United States Public Health Service, Food and Drug Administration" are excluded. These sections have not been adopted, but may be used as reference information for public health purposes.

(2) The department, except as otherwise provided in this chapter, adopts and incorporates by reference the following publication: "Food and Consumer Safety (FCS) Circular 1-2012" for nonpublic water systems serving food establishments, including temporary food establishments. A copy of FCS Circular 1-2012 may be obtained from the Department of Public Health and Human Services, Food & Consumer Safety Section, P.O. Box 202951, Helena, MT 59620-2951. The FCS Circular 1-2012 is also available on the department's web site at www.fcss.mt.gov.

AUTH: 50-50-103, MCA

IMP: 50-50-102, 50-50-103, 50-50-105, 50-50-107, 50-50-201, 50-50-301, 50-50-302, 50-50-304, MCA

NEW RULE II CHAPTER 1: PURPOSE AND DEFINITIONS The terms defined in this section are modifications or additions to the definitions described in this chapter of the 2013 Food Code:

(1) "Adulterated" means the same as determined in 50-31-202, MCA instead of the "Adulterated" definition in section 1-201.10 of the November 3, 2013 model

document of food regulations promulgated by the United States Food and Drug Administration (Food Code).

(2) "Bakery" means processing or packaging of baked goods described in 50-50-102(1), MCA for sales or service directly to consumers.

(3) "Catering kitchen" means the activity of providing food wholly or in part owned by the caterer for a specific event at a location other than the licensed food establishment or food service establishment, as defined in 50-50-102(7)(a) and (b), MCA, on a contractual, prearranged basis to a specific subset of the public, such as invited guests to a wedding or similar celebration, or to participants in an organized group or activity. A catering kitchen is not the same activity as a contract cook.

(4) "Certified Food Protection Manager" (CFPM) means an individual who operates a food establishment or manages a food establishment who has successfully completed a test through an accredited program required under section 2-102.12 (A) of the Food Code.

(5) "Department" means the Montana Department of Public Health and Human Services.

(6) "Food Code" means the November 3, 2013 model document of food regulations promulgated by the United States Food and Drug Administration.

(7) "Food establishment" means the following:

(a) includes in section 1-201.10 (1) of the Food Code, any and all licensable establishments stated in Title 50, chapter 50, MCA;

(b) does not include in section 1-201.10 (3) of the Food Code, any and all food provider exclusions stated in Title 50, chapter 50, MCA;

(c) in section 1-201.10 (3)(f) of the Food Code, the term "small family day-care provider" actually means a day-care provider not required to be licensed by the department as a day-care center, under 52-2-721(1)(a), MCA; and

(d) in section 1-201.10 (3)(f) of the Food Code; a bed-and-breakfast operation actually means a bed-and-breakfast establishment that meets the definition in 50-51-102(1), MCA. Bed-and-breakfast establishments must meet food safety rules required in ARM 37.111.312 through 37.111.334.

(8) "Food manufacturing" means the same as 50-50-102(19), MCA, but for the purposes of license subtypes, should be on-site food processing for sales or service to the public, which includes drinking water vending machines and beverage ice production, packaging, or both.

(9) "Food service" means the same as 50-50-102(7), MCA, but for the purposes of license subtypes, should only be the sales or service of food to the public that is not processed on-site.

(10) "Legal licensee" means the same as "permit holder."

(11) "License" means the same as "permit."

(12) "License subtype" means one or more of the following food establishments: bakery, catering kitchen, food service, food manufacturing, meat shop, mobile food establishment, perishable food dealer, produce, school, tavern, or water hauler.

(13) "License type" means a food establishment at a fixed (nonmobile or permanent) location, mobile food establishment, or temporary food establishment.

(14) "Meat shop" means the same as 50-50-102(10), MCA, but is the processing or packaging of meat or poultry for sales or service to the public.

(15) "Mobile food establishment" means:

(a) A food establishment where food is served or sold from a motor vehicle, portable structure, nonmotorized cart, movable vehicle such as a push cart, trailer, or boat that periodically or continuously changes location and requires a servicing area to accommodate the unit for cleaning, inspection, and maintenance, as specified in paragraphs 5-402.14, 6-101.11, and 6-202.18.

(b) Mobile food establishment does not include a motor vehicle used solely to transport or deliver food by a motorized carrier regulated by the state or federal government or a concession stand designed to operate as a temporary food establishment.

(16) "Perishable food" means fruits, vegetables, and foods that require time/temperature control for safety (formerly known as potentially hazardous foods).

(17) "Perishable food dealer" means the same as 50-50-102(12), MCA, which is an operation that is in the business of purchasing and selling fruits, vegetables, and foods that require time/temperature control for safety (formerly known as potentially hazardous foods).

(18) "Potentially hazardous food" means time/temperature control for safety food.

(19) "Processing" means the same as "preparation" of food through one or more methods including: assembling, baking, bottling, brewing, canning, coating, cooking, cutting, dicing, distilling, drying, extracting, fermenting, freezing, grinding, heating, infusing, mixing, packaging, reheating, repackaging, pickling, slicing, smoking, stuffing, or other food treatment or food preservation method.

(20) "Produce" means fruits, vegetables, or grains sold directly to consumers in their natural or processed states.

(21) "Regulatory authority" means the department, the local board of health, the local health officer, or the local sanitarian, instead of the "regulatory authority" definition in section 1-201.10 of the Food Code.

(22) "School" means a building or structure or portion thereof occupied or used at least 180 days per year for the teaching of individuals, the curriculum of which satisfies the basic instructional program approved by the board of public education for pupils in any combination of kindergarten through grade 12, but excludes home schools as that term is defined in 20-5-102(2)(e), MCA. For purposes of this licensing subtype, in general, a school is also a learning institution that participates in the federal National School Lunch Program, under 7 CFR 210 of the Code of Federal Regulations.

(23) "Tavern, bar, brewery, winery, distillery, or saloon" means the sale or service of alcoholic beverages with or without beverage ice. This licensing subtype does not include on-site food manufacturing or food service, as defined in this section of the rules.

(24) "Temporary food establishment" means food establishment that operates at a fixed location for a period of no more than 14 consecutive days in conjunction with a single event or celebration, instead of the "Temporary food establishment" definition in section 1-201.10 of the Food Code.

(25) "Water hauler" means the same as 50-50-102(20), MCA.

AUTH: 50-50-103, MCA

IMP: 20-5-102, 50-50-102, 50-50-103, 50-50-104, 50-50-201, MCA

NEW RULE III CHAPTER 2: MANAGEMENT AND PERSONNEL (1) The following additions have been made to section 2-102.12 of Chapter 2.

(a) A one-year, phase-in period will apply to affected establishments to have a Certified Food Protection Manager, and the one-year period will begin from the date new rules are adopted.

(b) After the one-year, phase-in period, new legal licensees required to have a Certified Food Protection Manager must have a Certified Food Protection Manager within 90 days of issuance of a new license.

(c) After the one-year, phase-in period, existing legal licensees required to have a Certified Food Protection Manager must have a Certified Food Protection Manager within 30 days of losing their Certified Food Protection Manager.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

NEW RULE IV CHAPTER 3: FOOD (1) This chapter has been adopted with no modifications.

AUTH: 50-50-103, MCA

IMP: 50-50-102, 50-50-103, 50-50-301, 50-50-302, 50-50-303, 50-50-304, MCA

NEW RULE V CHAPTER 4: EQUIPMENT, UTENSILS, AND LINENS

(1) This chapter has been adopted with no modifications.

AUTH: 50-50-103, MCA

IMP: 50-50-102, 50-50-103, 50-50-301, 50-50-302 MCA

NEW RULE VI CHAPTER 5: WATER, PLUMBING, AND WASTE

(1) Additions have been made to section 5-101.11 (B) of this chapter for nonpublic water systems.

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

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

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

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

(3) An establishment using a nonpublic water supply system must have drinking water samples analyzed for coliform bacteria as follows:

(a) Sampling for coliform bacteria must be done before initial licensing, and at least in two separate months of each calendar year that the establishment operates.

(b) The sampling schedule must include collection when the water source is most likely to be contaminated, such as during April through June, September through October, during high, ground-water season, or as directed by the local regulatory authority.

(c) The local regulatory authority may require the establishment to sample:

- (i) monthly;
- (ii) in months the establishment operates; or
- (iii) if an inspection, sampling results, or an event indicates the water source is at high risk of contamination.

(d) The local regulatory authority may return the establishment to the sampling frequency stated in (3)(a), if an examination of the drinking water system by the local regulatory authority indicates the system is no longer at high risk of contamination.

(4) An establishment using a nonpublic water supply system must have a water sample analyzed for total nitrates before initial licensing and at least every three years the establishment is operating.

(5) After shock disinfection of the system, and the disinfectant is no longer detected in the system, a sample for coliform bacteria must be collected for analysis at least three to five days after the disinfectant is no longer detected in the system.

(6) Water samples must be analyzed by a laboratory licensed and certified for drinking water analysis by the state of Montana.

(7) The establishment must report water sampling test results to the local regulatory authority in a format acceptable to the local regulatory authority within five days of receiving the results, except as required in (9)(c) and (11)(d).

(8) The establishment must keep test results readily available for inspection purposes on the premises of the licensed establishment for at least five years.

(9) If coliform bacteria are detected in a nonpublic water system routine sample, the establishment must:

(a) collect at least four additional or repeat samples within 24 hours of notification of the contamination at the following system locations:

- (i) site of the original contaminated routine sample;
- (ii) upstream from the contaminated routine sample;
- (iii) downstream from the contaminated routine sample; and
- (iv) at the source of the drinking water supply system, before the distribution plumbing; or

(v) as directed by the local regulatory authority.

(b) collect at least five samples during the month following a detection of coliform bacteria in any routine sample; and

(c) notify the local regulatory authority of the test results within 48 hours of receiving them.

(10) If coliform bacteria are detected in a repeat sample, the establishment must:

(a) take appropriate corrective action to eliminate the condition causing the positive test results; and

(b) post an advisory sign or placard regarding the test results in a conspicuous place for public viewing at each point of entry, or as directed by the local regulatory authority.

(11) If fecal coliform bacteria, *Escherichia coli*, or both are detected in a routine sample or repeat sample, the establishment must:

(a) immediately stop using the water source;

(b) provide a temporary source of safe water in accordance with (17);

- (c) implement appropriate corrective actions; and
- (d) notify the local regulatory authority of the test results within 24 hours of receiving them.

(12) If an establishment fails to take the required samples following the detection of coliform bacteria, or the laboratory fails to test for fecal coliform bacteria or *Escherichia coli* in coliform positive samples, the establishment must follow corrective actions as specified in (13).

(13) For nonpublic water systems, appropriate corrective actions must be implemented in a timely manner to eliminate the condition or conditions that resulted in the positive test result(s), which may include, but not be limited to: shock disinfection of the entire water system and replacement or repair of the water system by a date set by the local regulatory authority when:

- (a) A water sample exceeds a maximum contaminant level as specified in ARM Title 17, chapter 38, subchapter 2;
- (b) The water system does not have the capacity to provide the quantity needed for drinking, food processing, personal hygiene, or cleaning;
- (c) After examination of the water system, the local regulatory authority provides a written report to the operator or person-in-charge that the water system is at high risk of contamination;
- (d) A pathogenic microorganism is detected in a sample; or
- (e) A confirmed disease outbreak is linked with the water system.

(14) When a water system is replaced or repaired, the water system must be shock disinfected before the system is placed into service.

(15) The local regulatory authority shall issue a restricted-use order to an establishment using a nonpublic water supply when:

- (a) Fecal coliform or *Escherichia coli* is detected in a nonpublic water system sample;
- (b) Total nitrate level is greater than 10 milligrams per liter in a nonpublic water system sample;
- (c) Maximum contaminant levels exceed parameters specified in ARM Title 17, chapter 38, subchapter 2;
- (d) A pathogenic microorganism is detected; or
- (e) A confirmed disease outbreak is linked with the water system.

(16) An establishment subject to a restricted-use order must provide and use a temporary source of potable water as described in (17) for consumers and staff for drinking, food processing, personal hygiene and cleaning, or immediately discontinue operations.

(17) With approval from the local regulatory authority, an establishment may provide potable water on a temporary basis using one or more of the following:

- (a) Bottled or packaged potable water from a department-licensed wholesale or retail food establishment, if the water is dispensed directly from the original container;
- (b) Water from a Department of Environmental Quality (DEQ)-approved public water supply that meets the requirements of ARM Title 17, chapter 38, subchapters 1, 2, 3, and 5, stored in a clean, sanitized, and covered potable water container or holding tank;
- (c) Water delivered by a department-licensed potable water hauler;

(d) If the water is contaminated with fecal coliform bacteria or Escherichia coli, water that has been boiled for at least one minute, and stored and served from a clean, sanitized, and covered container; or

(e) Other source approved by the local regulatory authority.

(18) If the local regulatory authority determines that boiling water will not provide adequate potable water, it may require an establishment to use another approved method for supplying water.

(19) An establishment subject to a restricted-use order must post an advisory sign or placard regarding the restricted-use order in a conspicuous place for public viewing at each point of entry, or as directed by the local regulatory authority.

(20) A water supply under a restricted-use order may not be used to make ice for food or beverages.

(21) An establishment subject to a restricted-use order may wash, rinse, and sanitize dishes, utensils, and equipment using the affected water system, if using an approved chemical disinfectant or dish machine that reaches 180 degrees Fahrenheit (82 degrees Celsius) during the final rinse cycle, or as directed by the local regulatory authority.

(22) A restricted-use order may be cancelled by the local regulatory authority after:

(a) Laboratory sampling demonstrates that the water supply is safe;

(b) Water system plumbing is completely flushed with cold water for at least five minutes; and

(c) Food-contact surfaces and equipment directly and indirectly connected to the water system must be cleaned and sanitized prior to use including, but not limited to: post-mix carbonated beverage machines, spray misters, coffee makers, tea urns, ice machines, glass washers, and dish machines.

(23) Additions have been made to section 5-303 of this chapter.

(24) Every mobile food establishment must be equipped with a gravity or pressurized water storage tank.

(25) The water storage tank in a mobile food establishment must be of adequate capacity, as required in section 5-103.11 (A), but no smaller than the following:

(a) a mobile food establishment that serves beverages or food or reheats processed foods must have a water storage tank with a capacity of at least 38 liters (10 gallons) for food employee handwashing;

(b) a food pushcart must have a water storage tank with a minimum capacity of 19 liters (5 gallons) for handwashing; and

(c) a mobile food establishment that processes food or beverages must have a water storage tank with a capacity of at least 151 liters (40 gallons) for handwashing, utensil washing, and sanitizing purposes.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

NEW RULE VII CHAPTER 6: PHYSICAL FACILITIES (1) Additions have been made to section 6-301.14 of this chapter.

(2) Food establishment operators may create and post their own signs or posters for the posting requirement.

(3) Signs or posters may also be obtained through the regulatory authority.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

NEW RULE VIII CHAPTER 7: POISONOUS OR TOXIC MATERIALS

(1) This chapter has been adopted with no modifications.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

NEW RULE IX CHAPTER 8: COMPLIANCE AND ENFORCEMENT

(1) Additions and modifications have been made to this chapter.

(2) In section 8-201.11, the regulatory authority may require properly prepared plans and specifications for review and approval before issuance of a new license to a new legal licensee at the change in ownership of an existing food establishment.

(3) Section 8-301.11 has not been adopted.

(4) Section 8-302.11 has not been adopted.

(5) Section 8-302.12 has not been adopted.

(6) Section 8-302.13 has not been adopted.

(7) Section 8-302.14 has not been adopted.

(8) Section 8-303.30 has not been adopted.

(9) Section 8-304.10 has not been adopted.

(10) Section 8-304.20 has not been adopted.

(11) Section 8-401.10 has not been adopted.

AUTH: 50-50-103, MCA

IMP: 50-50-102, 50-50-103, 50-50-104, 50-50-106, 50-50-107, 50-50-108, 50-50-109, 50-50-110, 50-50-201, 50-50-203, 50-50-205, 50-50-206, 50-50-207, 50-50-209, 50-50-210, 50-50-211, 50-50-212, 50-50-213, 50-50-301, 50-50-302, 50-50-304, 50-50-305, MCA

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

37.110.201 INTRODUCTION (1) This is a subchapter regulating retail food service establishments that serve prepared food and drink to the public, as provided in Title 50, chapter 50, MCA.

~~(2) This subchapter defines food, potentially hazardous food, food service establishment, mobile food service, semipermanent food service establishment, temporary food service establishment, regulatory authority, utensils, equipment, etc.; provides for the sale of only sound, safe, properly labeled food; regulates the sources of food; establishes sanitation standards for food, food protection, food service operations, food service personnel, food service and utensils, sanitary~~

~~facilities and controls, and other facilities; requires licenses for the operation of food service establishments; regulates the inspection of such establishments; provides for the examination and condemnation of food; provides for enforcement of this subchapter, and the fixing of penalties.~~

~~(3)~~ (2) All retail food service establishments must comply with all appropriate building construction standards as set forth by 50-60-101, MCA and all applicable administrative rules as adopted by the Department of ~~Commerce~~ Labor and Industry in ARM Title 8 24.

AUTH: 50-50-103, MCA

IMP: 50-50-102, 50-50-103, 50-60-101, MCA

37.110.238 LICENSES (1) No person ~~shall~~ may operate a food ~~service~~ establishment who does not have a valid license issued by the department. Only a person who complies with the requirements of this subchapter ~~shall~~ will be entitled to receive or retain such a license. ~~Licenses are not transferable.~~ A valid license must be posted in every retail food ~~service~~ establishment.

(2) Any person desiring to operate a retail food ~~service~~ establishment ~~shall~~ must make written application for a license on forms provided by the department. ~~Such application must include the name and address of each applicant, the location and type of the proposed food service establishment.~~

(3) Prior to approval of an application for a license, the regulatory authority ~~or the local health department sanitarians~~ shall must inspect the proposed retail food ~~service~~ establishment to determine compliance with the requirements of this subchapter.

(4) The department will issue a license to the applicant if an inspection by a ~~state or local health officer or sanitarian~~ the regulatory authority reveals that the proposed retail food ~~service~~ establishment complies with all applicable requirements of this subchapter.

(5) The department may, after providing opportunity for hearing, ~~revoke~~ cancel a license for serious or repeated violations of any of the requirements of this subchapter or for interference with the department or other authorized persons in the performance of duty.

(6) Prior to ~~revocation~~ cancellation, the department will notify, in writing, the licensee of the specific reason(s) for which the license is to be ~~revoked~~ cancelled. The notice will further provide for the licensee the opportunity to request an administrative hearing in front of the department within ~~40~~ ten business days after the receipt of the notice. If no request for hearing is filed within the ~~40~~ ten-day period, the ~~revocation~~ cancellation of the license becomes final.

(7) The licensee may submit to the department an acceptable plan of correction within ~~40~~ ten business days after receiving the department's notice of ~~revocation~~ cancellation. Such an acceptable plan of correction will be a bar to canceling the license.

(8) A notice provided for in this rule is properly served when it is delivered to the holder of the license, or the person in charge, or when it is sent by registered or certified mail, return receipt requested, to the last known address of the holder of the license. A copy of the notice will be filed in the records of the department.

(9) The hearing provided for in this rule will be conducted by the department pursuant to Title 2, chapter 4, subchapter 6, MCA of the Montana Administrative Procedure Act regarding contested cases and ARM 37.5.117. The department ~~shall~~ will make a final finding based upon the complete hearing record and ~~shall~~ will sustain, modify, or rescind any notice or order considered in the hearing. The department will furnish a written report of the hearing decision to the licensee.

(10) Whenever a ~~revocation~~ cancellation of a license has become final, the holder of the ~~revoked~~ cancelled license may make written application for a new license.

(11) Obtaining the license referred to in (1) ~~of this rule~~ does not relieve the applicant from satisfying applicable requirements from other federal, state, or local agencies. These may include, ~~but are not limited to:~~

- (a) building code permits and inspections;
- (b) fire and life safety inspections;
- (c) private or public water supply system or sewage treatment systems permits or inspections; or
- (d) occupational health and safety requirements.

(12) The regulatory authority will assign a food establishment to a license type and subtype by assessing food processing procedures, food service, and utilizing the definitions in these rules.

(13) At the time of initial licensing and updated as needed, but no less than each licensing year, the regulatory authority will correctly assign a food establishment to one of four categories by evaluating the food processing and service procedures of the food establishment based on the criteria specified in Table 1:

Table 1
Food Establishment Complexity Categories

<u>Category</u>	<u>Establishment Complexity</u>
(1)	(i) only heat commercially processed time/temperature control for safety foods (TCS/potentially hazardous foods) for hot holding; (ii) process only non-TCS foods; (iii) no cooling TCS foods; (iv) establishments otherwise grouped in Category 2, but have shown through documentation to have achieved managerial control of foodborne illness risk factors; and (v) examples include: convenience stores, hot dog carts, coffee shops, and establishments that serve or sell only prepackaged, non-TCS foods.
(2)	(i) establishment has a limited menu; (ii) processed foods are immediately served or made-to-order; (iii) food operations may involve hot and cold holding of TCS foods, after processing or cooking; (iv) limited processing of TCS foods that require cooking, cooling, reheating, and the limited service of a few TCS foods; (v) establishments that would otherwise be grouped in Category 3, but have shown through historical documentation to have achieved managerial control of foodborne illness risk factors;

	(vi) newly licensed establishments that would otherwise be grouped in Category 1 are categorized here, until a history of managerial control of foodborne illness risk factors is documented; (vii) examples include: retail food stores, schools not serving a highly susceptible population, and quick-service operations.
(3)	(i) establishment has extensive menu and handling of raw ingredients; (ii) complex preparation including cooking, cooling, and reheating for hot holding involving many TCS foods; (iii) variety of processes require hot and cold holding of TCS food; (iv) establishments that would otherwise be grouped in Category 4, but have shown through historical documentation to have achieved managerial control of foodborne illness risk factors; (v) newly licensed establishments that would otherwise be grouped in Category 2 are categorized here, until a history of managerial control of foodborne illness risk factors is documented; (vi) examples include: full-service restaurant.
(4)	(i) establishments serving a highly susceptible population; (ii) engage in specialized processes, such as smoking, curing, reduced oxygen packaging, etc.; (iii) examples include: preschools, hospitals, nursing homes, and special processing requiring a variance.

AUTH: 50-50-103, MCA

IMP: 50-50-103, 50-50-201, 50-50-204, 50-50-205, 50-50-206, 50-50-207, 50-50-208, 50-50-209, 50-50-210, 50-50-211, 50-50-212, 50-50-213, 50-50-214, 50-50-215, MCA

37.110.239 INSPECTIONS (1) The local health officer, ~~or a registered~~ sanitarian, ~~or sanitarian-in-training~~ employed by or contracted with the local board of health shall perform an inspection of each retail food service establishment within the jurisdiction of the local board of health at least ~~twice~~ once every 12 months ~~unless that schedule is modified by signed agreement with the department.~~ Additional inspections of the food service establishment must be performed as often as necessary for the enforcement of this subchapter.

~~(2) The local health officer, local health department sanitarian or sanitarian-in-training, or an authorized representative of the department, after proper identification, must be permitted to enter any food service establishment at any reasonable time for the purpose of making inspections to determine compliance with this subchapter and must be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received, or used, or to persons employed.~~

~~(3) Whenever an inspection of a food service establishment is made, the findings must be recorded on an inspection form authorized by the department. The inspection report form must summarize the requirements of this subchapter. Inspection remarks must be written to reference the item violated and must state the correction to be made. A copy of the completed inspection report form must be furnished to the person in charge of the establishment at the conclusion of the~~

inspection. The completed inspection report form is a public document that must be made available for public review or distribution upon payment of copying costs to any person upon request.

(4) The completed inspection report form must specify a reasonable period of time for the correction of the violations found and correction of the violations must be accomplished within the period specified, in accordance with the following provisions:

(a) All critical item violations must be corrected as soon as possible, but in any event, within 10 days following inspection. Critical items include the following:

(i) ARM 37.110.203(61); 37.110.204(1); 37.110.206(2), (4) and (7); 37.110.207(4), (5), (7), (8), (9), and (11); 37.110.208(1), (3), (6), (7) and (8)(d); 37.110.210(1), (4), (6) and (7)(e); 37.110.212(10) and (11); 37.110.213(9)(a); 37.110.215(1), (2), (3), (13)(d), (14), (15), (23), (24), (25), and (28); 37.110.217(1), (3) and (6); 37.110.218(1); 37.110.219(1), (2), (3) and (6); 37.110.221(3); 37.110.223(1), (4) and (5); 37.110.231(1), (2), (3), (5), (6), (7), (8) and (9); 37.110.232(10); 37.110.236(3), (8), (10) and (11); 37.110.240(4); 37.10.242(1); 37.110.252(1) and (2); 37.110.253(5); 37.110.254; 37.110.255; 37.110.256(3) and (4); and 37.110.257(3)(c) and (d);

(b) All other violations which are the remaining food establishment rules not mentioned in (4)(a) and (4)(a)(ii) must be corrected as soon as possible, but in any event, by the time of the next routine inspection;

(c) In the case of temporary food service establishments, all violations must be corrected within 24 hours.

(5) The inspection report must state that failure to comply with any time limits for corrections of critical item violations may result in cessation of food service operations.

(6) In the case of critical items, the local health officer, sanitarian, or sanitarian-in-training must conduct a follow-up inspection to check for correction compliance and record the results on an inspection form authorized by the department.

AUTH: 50-50-103, 50-50-301, 50-50-305, MCA

IMP: 50-50-103, 50-50-104, 50-50-203, 50-50-205, 50-50-206, 50-50-301, 50-50-302, 50-50-305, MCA

37.110.243 MINIMUM PERFORMANCE REQUIREMENTS FOR LOCAL HEALTH AUTHORITIES (1) To qualify for reimbursement under 50-50-305, MCA, a local board of health must either will perform inspections as specified in this subchapter or enter into a written, signed cooperative agreement with the department that establishes the duties and responsibilities of the local board of health and the department consistent with this subchapter, or indicate in writing to the department that each food establishment within the jurisdiction of the local board will be inspected at least twice every 12 months as specified in ARM 37.110.239(1).

(2) Requests for cooperative agreements must contain the current risk analysis information required by the department.

(3) All local boards of health must meet the following criteria regardless of the existence or absence of a cooperative agreement:

(a) At least one sanitarian working with or for the local board of health must receive training from the department in standardized food service inspections techniques. The department is responsible for making training and standardization review available on a periodic basis;

(b) ~~The local board of health must ensure that the following are done by the local health officer, sanitarian, or sanitarian-in-training:~~

~~(i) If a preliminary inspection is required under ARM 37.110.241, the food service establishment is inspected for compliance with this subchapter within 10 days after receiving notice from the department or the establishment that such a preliminary inspection is needed;~~

~~(ii) Each food service establishment within the jurisdiction of the local board of health is inspected at least twice every 12 months, or on the schedule specified in a signed agreement with the department;~~

~~(iii) All the requirements of ARM 37.110.239 are complied with;~~

~~(iv) Quarterly inspection reports are submitted to the department within 10 days following the close of each quarter of the fiscal year (1st quarter-September 30; 2nd quarter-December 31; 3rd quarter-March 31; 4th quarter-June 30) on forms approved by the department; Reporting of inspection dates must be documented in a manner and frequency approved by the department.~~

~~(v) (c) All documentation of enforcement of this subchapter, including but not limited to inspection reports, consumer complaints, illness investigations, plans of correction, and enforcement actions, is retained for 5 five years and copies of the documentation are submitted or otherwise made available to the department upon request.~~

(4) A failure by the local board of health to meet all of its responsibilities ~~under the cooperative agreement or under (3)(a), and (b), and (c) above~~ may result in the withholding of funds from the local board reimbursement fund in an amount to be determined by the department.

AUTH: 50-50-103, 50-50-305, MCA

IMP: 50-50-104, 50-50-208, 50-50-214, 50-50-215, 50-50-301, 50-50-305, MCA

5. The department proposes to repeal the following rules:

37.110.202 PURPOSE is found on page 37-27153 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.203 DEFINITIONS is found on page 37-27154 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.204 FOOD SUPPLIES is found on page 37-27167 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.206 FOOD STORAGE AND PROTECTION is found on page 37-27171 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.207 FOOD PREPARATION is found on page 37-27174 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.208 FOOD DISPLAY AND SERVICE is found on page 37-27179 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.209 FOOD TRANSPORTATION is found on page 37-27184 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.210 FOOD EMPLOYEES is found on page 37-27185 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.212 MATERIALS FOR EQUIPMENT AND UTENSILS is found on page 37-27193 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.213 EQUIPMENT AND UTENSIL DESIGN AND FABRICATION is found on page 37-27195 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.214 EQUIPMENT INSTALLATION AND LOCATION is found on page 37-27198 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.215 EQUIPMENT AND UTENSIL CLEANING AND SANITATION is found on page 37-27201 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.216 EQUIPMENT AND UTENSIL STORAGE is found on page 37-27206 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.217 WATER SUPPLY is found on page 37-27207 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.218 SEWAGE is found on page 37-27209 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.219 PLUMBING is found on page 37-27210 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.220 TOILET FACILITIES is found on page 37-27211 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.221 HAND WASHING FACILITIES is found on page 37-27215 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.222 GARBAGE AND REFUSE is found on page 37-27216 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.223 INSECT AND RODENT CONTROL is found on page 37-27218 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.225 FLOORS is found on page 37-27221 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.226 WALLS AND CEILINGS is found on page 37-27222 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.227 CLEANING PHYSICAL FACILITIES is found on page 37-27223 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.228 LIGHTING is found on page 37-27223 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.229 VENTILATION is found on page 37-27224 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA

IMP: 50-50-103, MCA

37.110.230 DRESSING ROOMS AND LOCKER AREAS is found on page 37-27224 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.231 TOXIC MATERIALS is found on page 37-27225 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.232 PREMISES is found on page 37-27227 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.236 TEMPORARY FOOD SERVICE ESTABLISHMENTS is found on page 37-27233 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.240 EXAMINATION AND CONDEMNATION OF FOOD is found on page 37-27239 of the Administrative Rules of Montana.

AUTH: 50-50-103, 50-50-303, MCA
IMP: 50-31-509, 50-50-103, MCA

37.110.241 REVIEW OF PLANS is found on page 37-27240 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.242 SUSPECTED DISEASE TRANSMISSION: PROCEDURE is found on page 37-27241 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, 50-50-105, MCA

37.110.252 HIGHLY SUSCEPTIBLE POPULATION is found on page 37-27263 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.253 VARIANCES is found on page 37-27264 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.254 SUBMISSION OF A HAZARD ANALYSIS AND CRITICAL CONTROL POINT (HACCP) PLAN is found on page 37-27265 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.255 CONTENTS OF A HACCP PLAN is found on page 37-27267 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.256 MOBILE FOOD SERVICE is found on page 37-27268 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.257 PUSHCARTS is found on page 37-27270 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.258 SEMIPERMANENT FOOD SERVICE ESTABLISHMENT is found on page 37-27271 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

37.110.259 PERISHABLE FOOD VENDING MACHINES is found on page 37-27271 of the Administrative Rules of Montana.

AUTH: 50-50-103, MCA
IMP: 50-50-103, MCA

6. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing to adopt new rules and is proposing amendments to the existing Retail Food Establishment Rules to update standards to the most recent scientific information, better align the rules with other states, and improve uniform application of food

safety principles throughout Montana. The proposed new rules and substantive amendments are specifically outlined below.

New Rule I

The department is proposing to adopt the referenced document with additions, modifications, and no modifications to specific chapters in the document, as described in New Rule I, and detailed in New Rules II through IX. The department is also proposing this rule because the referenced chapter represents the best accumulated knowledge for a uniform system of provisions that address the safety and protection of food offered at the retail level.

New Rule II

The department is proposing to modify and add to definitions in the adopted document to correspond with existing state law and clarify terms in the proposed rules.

New Rule III

The department is proposing to add a phase-in period for when establishments must have a trained food protection manager. The department is also proposing this rule because the referenced chapter represents the best accumulated knowledge for a uniform system of provisions that address the safety and protection of food offered at the retail level.

New Rule IV

The department is proposing to adopt Chapter 3 of the model food code without modifications. The department is proposing this rule because the referenced chapter represents the best accumulated knowledge for a uniform system of provisions that address the safety and protection of food offered at the retail level.

New Rule V

The department is proposing to adopt Chapter 4 of the model food code without modifications. The department is proposing to adopt this rule because the referenced chapter represents the best accumulated knowledge for a uniform system of provisions that address the safety and protection of food offered at the retail level.

New Rule VI

The department is proposing to add minimum potable water tank sizes for mobile food establishments to help ensure an adequate water supply is available for such food establishments. The new rule also provides specific procedures on how to address suspected and contaminated nonpublic water wells serving food

establishments. The department is also proposing this rule because the referenced chapter represents the best accumulated knowledge for a uniform system of provisions that address the safety and protection of food offered at the retail level.

New Rule VII

The department is proposing to promote awareness that food establishment operators may create their own signs or posters, or obtain such signs or posters from a regulatory agency, in light of predatory actions by vendors in other states that have adopted the same or similar sign or poster regulations. The department is also proposing this rule because the referenced chapter represents the best accumulated knowledge for a uniform system of provisions that address the safety and protection of food offered at the retail level.

New Rule VIII

The department is proposing to adopt Chapter 7 of the model food code without modifications. The department is proposing this rule because the referenced chapter represents the best accumulated knowledge for a uniform system of provisions that address the safety and protection of food offered at the retail level.

New Rule IX

The department is proposing to add, modify, and not adopt specific portions of this chapter in the model food code to enable correspondence with existing state law and existing state rules regarding compliance and enforcement.

ARM 37.110.201

The department is proposing to update and clarify terminology, while removing extraneous language from the rule.

ARM 37.110.238

The department is proposing to update and clarify terms with regards to licensing establishments. The department is also proposing to allow regulatory authorities the ability to assess food establishment operations and categorize them into a complexity category for data collection purposes, which may assist in epidemiologic investigations and policy decisions.

ARM 37.110.239

The department is proposing to update and clarify terms, ensure the inspection frequency rule corresponds with existing state law, and remove superfluous language from the rule that is better addressed through department-issued guidance documents, and training of sanitarians by the department or the local regulatory authority.

ARM 37.110.243

The department is proposing to update and clarify terms, ensure the inspection frequency rule corresponds with existing state law, and provide timely reporting of completed inspections to the department by the local regulatory authority.

ARM 37.110.202, 37.110.203, 37.110.204, 37.110.206, 37.110.207, 37.110.208, 37.110.209, 37.110.210, 37.110.212, 37.110.213, 37.110.214, 37.110.215, 37.110.216, 37.110.217, 37.110.218, 37.110.219, 37.110.220, 37.110.221, 37.110.222, 37.110.223, 37.110.225, 37.110.226, 37.110.227, 37.110.228, 37.110.229, 37.110.230, 37.110.231, 37.110.232, 37.110.236, 37.110.240, 37.110.241, 37.110.242, 37.110.252, 37.110.253, 37.110.254, 37.110.255, 37.110.256, 37.110.257, 37.110.258, 37.110.259

The department is proposing to repeal these rules because they will be addressed in the proposed model food code.

Fiscal Impact

There is no fiscal impact due to this rulemaking.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: 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., July 24, 2014.

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

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

10. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text

will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption, amendment, and repeal 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 June 16, 2014.

BEFORE THE MONTANA LOTTERY COMMISSION
DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT AND
2.63.201, 2.63.203, 2.63.407, 2.63.607,) REPEAL
and 2.63.1201 and the repeal of ARM)
2.63.601, 2.63.602, 2.63.608, 2.63.613,)
and 2.63.1001 pertaining to procedural)
rules, definitions, retailer commissions,)
business changes, prizes, license)
requirements and endorsements, and)
sale of scratch tickets)

TO: All Concerned Persons

1. On March 27, 2014, the Montana Lottery Commission (commission) published MAR Notice No. 2-63-504 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 528 of the 2014 Montana Administrative Register, Issue Number 6.

2. The commission has amended ARM 2.63.201, 2.63.407, and 2.63.607 exactly as proposed.

3. The commission has amended ARM 2.63.203 and 2.63.1201 as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.63.203 DEFINITIONS In addition to the definitions found in 32-7-103, MCA, the following definitions apply to this chapter:

(1) through (5) remain as proposed.

(6) "Terminal-issued ~~game~~ ticket" means a lottery ticket printed by a lottery terminal connected to a computer.

(7) "Ticket" means a lottery scratch ticket that has a removable coating covering symbols that determine the amount of prize a player can win a ticket or ~~other tangible evidence of participation used in lottery games authorized by law.~~

2.63.1201 PRIZES (1) through (13) remain as proposed.

(14) An owner or employee of a licensed lottery retailer shall identify themselves as such to lottery officials when claiming a prize at the lottery office or through the claim mail process. This information must be recorded on the claim form ~~presented to~~ maintained by the lottery as part of the prize file.

4. The commission has repealed ARM 2.63.601, 2.63.602, 2.63.608, 2.63.613, and 2.63.1001 as proposed.

5. The commission has thoroughly considered the comments and testimony received. A summary of the comments received and the commission's responses follow:

COMMENT 1: Regarding ARM 2.63.203(10) and (11)—renumbered (6) and (7), representatives of retailer and gambling supply associations expressed concern that the proposed amendments might allow Internet sales of lottery products in a manner that would have a negative impact on their membership.

RESPONSE 1: While the commission attempted to make clear in its notice of public hearing that the proposed rules changes in no way were related to Internet gambling, in the interest of further discussion, the commission will not amend the definitions of "terminal-issued ticket" or "ticket" at this time and will address these at a later date.

COMMENT 2: Representatives from two retail associations indicated that they were unclear about the point in time and location where the retailer affiliation information would be collected.

RESPONSE 2: The commission has amended the rule to clarify that the only time retailer employment affiliation information will be collected is when a prize claim is presented to the Montana Lottery office in Helena, either in person or by mail.

ADDITIONAL CLARIFICATION: At its own discretion, the commission has removed the phrase "or receive" from ARM 2.5.610(3) so as to remain consistent with statutory language.

By: /s/ Wilbur Rehmann
Wilbur Rehmann, Chair
Montana Lottery Commission

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

Certified to the Secretary of State June 16, 2014.

BEFORE THE BOARD OF COUNTY PRINTING
OF THE STATE OF MONTANA

In the matter of the amendment of) CORRECTED NOTICE OF
ARM 2.67.303 pertaining to maximum) AMENDMENT
pricing and printing standards)

TO: All Concerned Persons

1. On April 10, 2014, the Board of County Printing published MAR Notice No. 2-67-505 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 642 of the 2014 Montana Administrative Register, Issue Number 7. A notice of amendment was published at page 1216 of the 2014 Montana Administrative Register, Issue Number 11.

2. In the proposal notice, the board stated its intent to make the amendment of ARM 2.67.303 effective July 1, 2014, but failed to include that notice in the notice of amendment. This corrected notice serves to make the effective date certain.

3. The board has amended ARM 2.67.303 exactly as proposed, but with the effective date of July 1, 2014.

4. The replacement pages for this corrected notice will be submitted to the Secretary of State June 30, 2014.

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

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

Certified to the Secretary of State June 16, 2014.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rule I pertaining to phytosanitary)
certification fees)

TO: All Concerned Persons

1. On February 13, 2014 the Department of Agriculture published MAR Notice No. 4-14-218 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 264 of the 2014 Montana Administrative Register, Issue Number 3.

2. The department has adopted the above-stated rule as proposed: New Rule I (4.12.1444).

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

COMMENT #1: Why did the fee have to go up so much?

RESPONSE #1: The issuance of phytosanitary certificates is an entirely fee-for-service program and the proposed fees are required for the department to continue providing this service. The department should have raised the fees earlier but allowed them to remain lower than the true cost of the program. The increase is necessary to create a functioning program that does not need the support of other parts of the department to operate. Even with the increase it will likely need some support from other units to pay its portion of central service charges, but that support is appropriate given the value of encouraging exports.

COMMENT #2: Could the increase be phased in instead of one big jump?

RESPONSE #2: The current fee structure has been in place for a long time and the fee increases are long overdue based on the revenue needed to provide the service. Hopefully, one fee increase will provide budget stability for the department and projectable future costs for applicants. The department does not have alternative sources of adequate funding for this that would allow a phased approach.

COMMENT #3: Could the fee be based on the actual time spent instead of per document?

RESPONSE #3: Fees based on the issuance of the phytosanitary certificate are the simplest to manage by the applicant and department. This allows both to have predictable and standardized costs/revenue. Typically, small shipments require more time researching requirements and longer specialized inspections. If the fees

were based on actual time required to issue the certificate, some small shipments would be charged certification fees far exceeding the value of the shipment.

COMMENT #4: Shouldn't the fee be based on the value of the item being sent, not per shipment (to be more supportive of smaller shipments/shippers)?

RESPONSE #4: The effort and costs associated with issuing an individual certificate are independent of the value of the shipment. The department has to be fair to all size of shippers and the value of the item shipped bears no relation to the cost or time required to create the phytosanitary (or related) documents.

COMMENT #5: Couldn't general funds be used to pay for this as that is how it is done in other states to encourage exports?

RESPONSE #5: General funds can only be authorized by the legislature. Commenters are welcome to seek such funds (which would lower the fee) in the next legislative session.

COMMENT #6: With the fee increase will the program be self-sufficient and if so for how many years?

RESPONSE #6: The issuance of phytosanitary certificates is an entirely fee-for-service program and the proposed fees are required for the department to continue providing this service. The proposed fees will meet the current budget projections through FY2015. The increased fees should provide budget stability for several years but cannot be guaranteed because future costs and the number of certificates requested can be unpredictable.

COMMENT #7: What about using part-time workers located near key shippers to lower costs?

RESPONSE #7: The department has eight field offices that provide services across the entire state. Locations are based on the workload from all of the department's programs. Plant science specialists that issue phytosanitary certificates are required to have specific educational and experience requirements and maintain certification through USDA Export Services. The department has not been able to hire part-time seasonal personnel who are able to meet these requirements and maintain the required USDA certification. This suggestion of part-time staff located next to big nurseries is not a realistic solution and likely is not a fair way to staff a state agency.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State June 16, 2014.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION
Rules I through III pertaining to school)
crossing guards)

TO: All Concerned Persons

1. On April 24, 2014, the Department of Justice published MAR Notice No. 23-3-238 pertaining to the proposed adoption of the above-stated rules at page 773 of the 2014 Montana Administrative Register, Issue Number 8.

2. The Department has adopted the above-stated rules as proposed: New Rule I (23.3.1101), II (23.3.1102), and III (23.3.1103).

3. The department received two comments of general support for the proposed rules at the public hearing. Greg Noose testified in support of the proposed rules on behalf of the Montana Department of Justice, Motor Vehicle Division and Montana Highway Patrol and Fran Penner-Ray testified in support on behalf of the Office of Public Instruction.

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

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

Certified to the Secretary of State June 16, 2014.

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

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

TO: All Concerned Persons

1. On May 8, 2014, the Board of Athletic Trainers (board) published MAR Notice No. 24-118-4 regarding the public hearing on the proposed adoption of the above-stated rule, at page 915 of the 2014 Montana Administrative Register, Issue No. 9.

2. On May 29, 2014, a public hearing was held on the proposed adoption of the above-stated rule in Helena. No comments were received by the June 6, 2014, comment deadline.

3. The board has adopted NEW RULE I (ARM 24.118.509) exactly as proposed.

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 June 16, 2014

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.150.401 fees and the)
adoption of NEW RULE I military)
training or experience)
NOTICE OF AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On January 16, 2014, the Board of Hearing Aid Dispensers (board) published MAR Notice No. 24-150-38 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 13 of the 2014 Montana Administrative Register, Issue No. 1.

2. On February 10, 2014, a public hearing was held in Helena on the proposed amendment and adoption of the above-stated rules. Several comments were received by the February 14, 2014, comment deadline.

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

COMMENT 1: Three commenters opposed the proposed licensing fee increase, stating that board licensees have already paid two one-time fees and asserted that the higher fee will directly impact small businesses by increasing the licensing fees that businesses pay for employees. Commenters stated that the fee will be more than any other licensed profession in Montana, over three times more than the next highest paying profession. The commenters suggested the board instead seek ways of reducing costs and expressed concern with how the department calculated the fee for the board, given that most hearing aid dispensers in surrounding states pay less than \$200 for license renewal.

RESPONSE 1: The board clarified that it found that the proposed fee increase will have a "minimal impact" on small businesses. While the licensing fee increase will directly impact small businesses, the board found that the impact will be minimal and not significant.

The board understands the concerns that small business owners and licensees have with a \$1,500 licensing fee, having previously discussed the impact it will have on licensees. However, whether a business elects to pay the licensing fees of its employees is in the discretion of the business. When the board discussed a fee increase at its December 20, 2013, meeting, the board decided to propose raising the licensing fee to \$1,500 instead of \$2,000. The board determined a licensing fee of \$1,500 was the minimum amount of funding necessary to maintain any board operations. Given the board's projected expenditures for FY 2015 and beyond, the board must increase licensing fees to continue operating.

All licensing boards are statutorily mandated by 37-1-134, MCA, to set board fees commensurate with the costs of licensure and regulation. The board cannot set fees according to inflation, cost of living, or current salaries of licensees. Since 2011, the board has a smaller number of licensees, as audiologists were removed by statute from the authority of the board. Roughly 47 percent of the board's budget is a fixed cost allocation to the board for computer systems, web site support, staff salaries, phone and mail service.

The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. The board also reviews a current financial report, including the board's fiscal year income and expenditures to date, at each full board meeting. This fiscal information is publicly available from the board and is open to public inspection and scrutiny.

The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this are using electronic board books instead of paper ones, having some board meetings by telephone conference instead of in-person attendance, and the recent signing of a Memorandum of Understanding (MOU) between the department and the Department of Justice (DOJ) to jointly litigate consumer-related hearing aid dispenser complaints under the Consumer Protection Act (CPA). The MOU puts a system in place where the board can recover fines up to \$10,000 and attorney fees when the department jointly litigates cases with the DOJ under the CPA.

The board further clarifies that there has been a single \$1,000 assessment charged to licensees in May 2013. Pursuant to 37-1-101(9), MCA, the department was required to suspend the board's duties and assess a one-time charge against all board licensees because the board could not operate in a cost-effective manner. The department advised the board that increasing licensing fees will decrease the likelihood of board insolvency in the future, given the limited number of licensees and a minimum amount of funding required to keeping a board operational, per 2-15-121(2)(a), MCA.

COMMENT 2: One commenter expressed concern with the effectiveness of the board, since it appears that one or two companies garner most of the complaints, and the board has not been able to get the companies in line.

RESPONSE 2: As previously noted, the MOU the department entered into with DOJ on behalf of the board is designed to alleviate some of the costs in prosecuting licensees, as the Office of Consumer Protection allows DOJ to recover attorney fees and larger fines can be imposed. This may serve as a deterrent to future unprofessional conduct by the board's licensees.

Additionally, in 2013, the department was required to suspend board services and duties under 37-1-101(9), MCA, because the board was insolvent. Because of the one-time charge of \$1,000 assessed to licensees in May 2013, the board is now operational and again reviewing complaints filed against licensees.

The board has always been committed to and understanding of its roles of protecting the public's health, welfare, and safety. And in fact, the board reviewed 13 complaints in 2010, 16 complaints in 2011, and 2 complaints in 2012. With an

increased licensing fee and other cost-effective measures, the board will continue to focus on this important aspect of licensure.

The board sets licensure fees to be commensurate with associated board costs of licensing and regulation, including the processing of complaints against licensees and unlicensed individuals. However, per 37-1-312, MCA, all fines assessed by the board as disciplinary sanctions and paid by licensees must be deposited into the state general fund and do not go toward payment of board costs. The board notes that information on final disciplinary actions taken by the board is available to the public upon request to the board and is available in electronic format on the board's web site.

COMMENT 3: One commenter suggested that the board should dissolve if it cannot fiscally support itself and work to reestablish with another board comprised of similar professionals.

RESPONSE 3: The Legislature established the board and has authority over whether the board continues to regulate hearing aid dispensers in Montana. Interested licensees or members of the public are welcome to attend meetings of the Economic Affairs Interim Committee (EAIC) of the Montana Legislature, in which the solvency and future of the board are discussed.

The board is an executive branch agency created by the Legislature to protect the public by licensing and regulating hearing aid dispensers in the state. The Legislature also enacted the statute that mandates the board fund itself solely through its own licensure fees. Thus, the function or funding of the board can only be changed through actions of the Legislature.

The board has previously discussed joining with another board comprised of similar professionals, but has not actively pursued this option because of a perceived lack of interest from other boards and because the decision is in the discretion of the Legislature.

4. The board has amended ARM 24.150.401 exactly as proposed.
5. The board has adopted NEW RULE I (ARM 24.150.507) exactly as proposed.

BOARD OF HEARING AID DISPENSERS
ALFRED MCLEES, 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 June 16, 2014

BEFORE THE BOARD OF MASSAGE THERAPY
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.155.301 definitions,)
24.155.401 fee schedule, 24.155.604)
licensure by examination, and)
24.155.608 licensure by)
endorsement, and the adoption of)
NEW RULE I military training or)
experience, NEW RULE II)
anonymous complaints, NEW RULE)
III nonroutine applications, and NEW)
RULE IV inactive license)

NOTICE OF AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On March 13, 2014, the Board of Massage Therapy (board) published MAR Notice No. 24-155-4 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 466 of the 2014 Montana Administrative Register, Issue No. 5.

2. On April 3, 2014, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the April 11, 2014, comment deadline.

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

GENERAL COMMENTS

COMMENT 1: One commenter generally supported the proposed amendments and new rules.

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

ARM 24.155.604 – LICENSURE BY EXAMINATION

COMMENT 2: Several commenters suggested that the board reconsider adding the National Examination for State Licensing (NESL) as an approved licensing examination, because the commenters believe that exam to be obsolete and no longer supported by the National Certification Board for Therapeutic Massage and Bodywork. One commenter added that the only recognized exams should be the National Certification Examination for Therapeutic Massage and Bodywork

(NCETMB) and the National Certification Examination for Therapeutic Massage (NCETM).

RESPONSE 2: The board determined that it is necessary to add NESL to the rules as an approved licensing examination because the board still accepts the NESL examination from potential applicants applying from other states.

ARM 24.155.608 – LICENSURE BY CREDENTIAL

COMMENT 3: One commenter asserted that the breakdown of the massage therapy course of study curriculum for licensure by credential in the proposal did not match the guidelines of the National Certification Board for Therapeutic Massage and Bodywork (NCBTMB). The commenter stated that if the board's goal was to match the guidelines, the board should amend the rule to accurately reflect the NCBTMB's current guidelines.

RESPONSE 3: The board has determined it is necessary to amend the rule to allow greater flexibility for applicants licensed in other states and concluded that the rule still complies with the education requirements by examination.

COMMENT 4: A commenter asked the board to clarify whether it would allow an applicant to receive credit for online classes taken to satisfy the proposed requirements of (2)(e)(i)(B) and (2)(e)(i)(C).

RESPONSE 4: The board determined that 200 hours have to be physically in class with instructor supervision and the remaining 300 hours could be in class or an online study.

COMMENT 5: A commenter opined that online classes do not prepare students as well as in-class instruction.

RESPONSE 5: The board determined that 200 hours have to be physically in class with instructor supervision and the remaining 300 hours could be in class or an online study.

NEW RULE I – MILITARY TRAINING OR EXPERIENCE

COMMENT 6: A commenter asked how specific the board would be in terms of further defining "relevant military training, service, or education" that would be equivalent to the experience required for licensure.

RESPONSE 6: The board concluded that these decisions will be made by the board on a case-by-case basis depending upon an applicant's actual military training, service, and education.

NEW RULE II – ANONYMOUS COMPLAINTS

COMMENT 7: A commenter expressed concern that the proposed new rule could discourage complaints filed by individuals with valid concerns who are afraid of retaliation if they identify themselves.

RESPONSE 7: The board believes that encouraging individuals to identify themselves will reduce the chance of unnecessary or frivolous complaints being filed. The board is still allowing anonymous complaints to be made, but the identity of the complainant makes the process go a lot smoother.

NEW RULE IV – INACTIVE LICENSE

COMMENT 8: One commenter appreciated the new rule allowing licensees to pay a reduced fee to maintain their licenses on inactive status.

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

4. The board has amended ARM 24.155.301, 24.155.401, 24.155.604, and 24.155.608 exactly as proposed.

5. The board has adopted NEW RULE I (24.155.610), NEW RULE II (24.155.904), NEW RULE III (24.155.613), and NEW RULE IV (24.155.616) exactly as proposed.

BOARD OF MASSAGE THERAPY
CAROLE LOVE, 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 June 16, 2014

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.36.604 pertaining to)
updating to 2014 levels the federal)
poverty index for the Montana)
telecommunications access program)

TO: All Concerned Persons

1. On April 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-668 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 790 of the 2014 Montana Administrative Register, Issue Number 8.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.
4. This rule amendment is effective July 1, 2014.

/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 June 16, 2014.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.87.1803, 37.106.1955, and)
37.106.1961 pertaining to the mental)
health center: comprehensive school)
and community treatment program)
(CSCT) endorsement requirements)

TO: All Concerned Persons

1. On April 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-669 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 793 of the 2014 Montana Administrative Register, Issue Number 8.

2. The department has amended 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 responses are as follows:

COMMENT #1: One commenter thanked the bureau for listening to provider input regarding changing units billed by therapists from 50% to 40% and increasing the percentage of allowable units billed by the mental health worker from 50% to 60%. The commenter would like to encourage the department to continue to take the fiscal impact this percentage rule has on providers into account for future rule making processes and the commenter will continue to advocate for the full removal of this rule. In addition, the commenter asked that rule language stating "Services must be billed in the month the service is provided" be corrected to read "...for the month..." rather than "...in the month."

RESPONSE #1: The department thanks the commenter for the comment. In addition, the department is advising the commenter that the "Services must be billed in the month the service is provided" has already been corrected on the Office of Secretary of State's web page to read "Services must be billed for the month the service is provided."

/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 June 16, 2014.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.104 and 37.85.105)
pertaining to the revision of fee)
schedules for Medicaid provider rates)

TO: All Concerned Persons

1. On April 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-670 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 797 of the 2014 Montana Administrative Register, Issue Number 8.

2. The department has amended ARM 37.85.104 as proposed.

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

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY
ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID
PROVIDER FEE SCHEDULES (1) through (3)(l) remain as proposed.

(m) The early and periodic screening, diagnostic and treatment (EPSDT) services fee schedules for private duty nursing, nutrition, and orientation, and mobility specialists as provided in ARM 37.86.2207(2), is effective July 1, 2014.

(n) through (6) remain as proposed.

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

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

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

HOSPITAL SERVICES

Responses to comments regarding hospital services are as follows:

COMMENT #1: One comment was received stating support for the department's proposal to rebase the inpatient Diagnosis Related Group (DRG) payment system, modify the outlier payment policy, and make other adjustments to the payment system.

RESPONSE #1: The department thanks the commenter for their support of the adjustments made to the DRG payment system.

COMMENT #2: One commenter stated that putting the complete appropriation for the 2% hospital rate increase into the outpatient hospital Ambulatory Payment Classification (APC) system was reasonable because no payment adjustments have been made for outpatient services in recent memory. The commenter also stated that the policy is reasonable since the inpatient payment amounts are near the Medicare upper limit and the outpatient payments are well below the federal cap.

RESPONSE #2: The department thanks the commenter for their support regarding the appropriation of this rate increase.

COMMENT #3: One comment stated that the commenter appreciates the department's efforts to work collaboratively with the Montana Hospital Association (MHA) Task Force on Facility Reimbursement in advance of the proposed rules.

RESPONSE #3: The department recognizes the need for effective communication and cooperation with providers regarding the review of policy implications generated by proposed rule amendments. The department is committed to working with members of the health care industry regarding these issues. The department thanks the commenter for their support.

COMMENT #4: One commenter stated that they recognize the delivery of health care is a team effort in Montana and expressed support of the efforts to increase reimbursement rates for other Medicaid providers.

RESPONSE #4: The department thanks the commenter for their support of the rule.

COMMENT #5: One commenter stated that the inpatient hospital base rate for out-of-state facilities designated as Centers of Excellence was miscalculated and should be 3.7% less than the base rate currently being proposed within the All Patient Refined – Diagnosis Related Groups (APR-DRG) inpatient fee schedule. The commenter indicated that correcting the calculated rate would amend the proposed Centers of Excellence inpatient base rate from \$8,403.00 to \$8,095.00.

RESPONSE #5: The department thanks the commenter for recognizing this miscalculation. The proposed inpatient base rate in the Medicaid provider fee schedule for Centers of Excellence will be amended to reflect the new rate of \$8,095.00. The department would like to clarify that even though the base rate was decreased from the original proposal, the new proposed rate of \$8,095.00 still reflects an increase in the base rate for Centers of Excellence from last year's base rate amount.

PHYSICIAN SERVICES

Responses to comments regarding physician services are as follows:

COMMENT #1: One commenter expressed support for the department's amendments to the fee schedule amounts paid for through physician services.

RESPONSE #1: The department thanks the commenter for their support of the rule.

COMMENT #2: One comment stated that the commenter understands the department annually calculates conversion factors for physician services and the adjustments proposed reflect the increased reimbursement for physician services as directed by the legislature. The commenter expressed appreciation of the steps taken by the legislature and department to ensure vulnerable patients have ongoing access to care. Additionally, the commenter indicated support for the proposed change to physician provider rates.

RESPONSE #2: The department thanks the commenter for their support of the rule.

ALLIED HEALTH SERVICES

Responses to comments regarding Allied Health Services are as follows:

COMMENT #1: One comment was received indicating that a comma was incorrectly placed when referring to the orientation and mobility specialist. The orientation and mobility specialist is a sole provider and a comma should not appear within this title.

RESPONSE #1: The department thanks the commenter for recognizing this oversight. The comma will be removed from this portion of the rule to indicate that the orientation and mobility specialist is a sole provider.

COMMENT #2: One commenter expressed support for the department's amendments to the fee schedule amounts paid for through allied health services.

RESPONSE #2: The department thanks the commenter for their support of the rule.

5. These rule amendments are effective July 1, 2014.

/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 June 16, 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 amendment of 37.79.102, 37.79.304, 37.79.326, 37.86.610, 37.86.705, 37.86.805, 37.86.1005, 37.86.2005, and 37.86.2605 pertaining to Medicaid allied health services program reimbursement and rates) NOTICE OF ADOPTION AND AMENDMENT))))))))))

TO: All Concerned Persons

1. On April 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-672 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 816 of the 2014 Montana Administrative Register, Issue Number 8.

2. The department has adopted New Rule I (37.86.1103) as proposed.

3. The department has amended ARM 37.79.102, 37.79.304, 37.79.326, 37.86.610, 37.86.705, 37.86.805, 37.86.1005, and 37.86.2005, as proposed.

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

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) and (2) remain as proposed.

(3) For items and services for which no fee has been set in the department's fee schedule referred to in (2), reimbursement will be set by the following method:

(a) and (b) remain as proposed.

(4) For supplies or equipment, where there is no Medicare or Medicaid set fee, the provider's usual and customary charge in (1)(a) will be considered reasonable if set at 75% of the manufacturer's suggested retail price. For items without a manufacturer's suggested retail price, the charge will be considered reasonable if the provider's acquisition cost from the manufacturer is at least 50% of the charge amount.

(4) remains as proposed but is renumbered (5).

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

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

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

COMMENT #1: One comment was received indicating there was an oversight by the department to include in the proposed rule change, payment methodology for supply codes listed on the fee schedule where no department fee is set. These codes were formally reimbursed using the "By Report" methodology. It is recommended the department consider a billed charge as reasonable, if based on a percentage of Manufacturer's Suggested Retail Price (MSRP), or the provider's acquisition cost when no MSRP is available.

RESPONSE #1: The department thanks the commenter for recognizing this oversight and has added this payment methodology to the ambulance services rule at ARM 37.86.2605(4).

6. These rule amendments are effective July 1, 2014.

/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 June 16, 2014

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.85.212, 37.86.101,)
37.86.105, 37.86.1201, 37.86.3205,)
37.87.901, and 37.88.907 pertaining)
to revision of by report)
reimbursement)

TO: All Concerned Persons

1. On April 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-673 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 828 of the 2014 Montana Administrative Register, Issue Number 8.

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

3. No comments or testimony were received.

4. This rule amendment is effective July 1, 2014.

/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 June 16, 2014.

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

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

TO: All Concerned Persons

1. On May 8, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-674 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 933 of the 2014 Montana Administrative Register, Issue Number 9.

2. The department has amended 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 responses are as follows:

COMMENT #1: Multiple commenters stated concern that the change to the percentage-based administrative fee did not allow providers ample time to implement a new fee methodology. The commenters asked that the proposal be delayed in order to give additional time to seek guidance and develop alternative fee methodologies.

RESPONSE #1: The department appreciates the commenters' concern regarding administrative fee methodology. The department will engage the providers in discussion and research alternative fee structures but will not delay the adoption of MAR Notice No. 37-674. Delaying implementation of MAR Notice No. 37-674 would result in a negative impact for providers as it would delay the 4% increase in rates effective July 1, 2014.

4. These rule amendments are effective July 1, 2014.

/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 June 16, 2014.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.1401, 37.86.1402,)
37.86.1405, and 37.86.1406)
pertaining to Medicaid reimbursement)
for ambulatory surgery centers (ASC))

TO: All Concerned Persons

1. On April 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-675 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 835 of the 2014 Montana Administrative Register, Issue Number 8.

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

3. No comments or testimony were received.

4. This rule amendment is effective July 1, 2014.

/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 June 16, 2014.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.4202 and 37.86.4205)
pertaining to dialysis clinic method of)
reimbursement)

TO: All Concerned Persons

1. On April 24, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-676 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 840 of the 2014 Montana Administrative Register, Issue Number 8.

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

3. No comments or testimony were received.

4. This rule amendment is effective July 1, 2014.

/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 June 16, 2014.

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.57.301, 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)

TO: All Concerned Persons

1. On May 8, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-677 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 939 of the 2014 Montana Administrative Register, Issue Number 9.

2. The department has amended ARM 37.57.301, 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 as proposed.

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

37.57.304 NEWBORNS HOSPITALIZED FOR NEONATAL INTENSIVE CARE (1) and (2) remain as proposed.

(3) In the event that the newborn stays in a health care facility ~~longer than~~ past 7 days following birth of age, an additional screening blood specimen must be 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) remains as proposed.

AUTH: 50-19-202, MCA

IMP: 50-19-203, MCA

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

COMMENT #1: The department received multiple comments that express support for newborn pulse oximetry screening for critical congenital heart disease (CCHD) including:

1 in 100 babies are born with some form of a congenital heart defect and pulse oximetry is a low-cost, non-invasive test that can be effective at detecting some of the most critical heart defects.

The pulse oximetry test is accurate at detecting hypoxemia which can be a sign of CCHD or of another problem that requires immediate intervention and may not be apparent on physical exam.

Infants with CCHD that are not detected early have higher rates of morbidity and mortality.

Personal accounts of babies with CCHD, not tested or identified at birth, and their prolonged hospital course and even death were given.

Reporting of screening results to the department is necessary to maintain and improve a quality testing and follow-up program.

RESPONSE #1: The department agrees with these comments.

COMMENT #2: The department received four comments requesting that Severe Combined Immunodeficiency (SCID) be added to newborn screening in Montana, including the following:

SCID is an immunodeficiency disease that is a pediatric emergency. Infants with this condition lack the white blood cells that are necessary to fight off bacteria and viruses resulting in serious, life-threatening infections.

Screening for SCID through newborn bloodspots is now available and may also identify other, less severe immunodeficiencies.

When this condition is identified early, treatment with a bone marrow transplant is highly effective and morbidity and mortality are greatly reduced.

RESPONSE #2: The department is currently evaluating the program requirements for inclusion of SCIDs in the newborn screening panel. Similar to the addition of any newborn screening test, one must consider a number of resource requirements which include availability of testing/technology for both primary and confirmatory screening, the capability to provide resources for short and long-term follow-up for SCIDs newborns and those additional babies with a variety of conditions that will require follow-up after primary screening, and ultimately the resources to provide bone marrow transplantation and ongoing clinical care to those children afflicted with this inherited disorder. Financial support to develop and maintain this program capability is both practical and necessary. Currently, most of these resources are not in place or do not exist within the Montana.

COMMENT #3: This comment suggested adding wording to ARM 37.57.304(4) to include all levels of nursery care, not just neonatal intensive care, indicating that

additional wording would ensure that infants in a "special care" nursery should also be screened for CCHD.

RESPONSE #3: The department agrees that infants in all levels of nursery care should be screened for CCHD; however, these infants would fall under ARM 37.57.305. Reminding providers that this includes all levels of infant nurseries will be an important part of provider education.

COMMENT #4: Two comments suggested revising the time frame in ARM 37.57.305(3) to show that CCHD screening should be completed after 24 hours of age and before 48 hours of age. 24-48 hours of age is the optimal timing for this screening to be completed so that infants with CCHD can be identified prior to becoming symptomatic.

RESPONSE #4: The department agrees that research demonstrates 24-48 hours of age is the optimal time to conduct screening. However, because there is a possibility that an infant older than 48 hours of age could have CCHD and not be symptomatic, the department does not want to limit screening only to those infants within the 24-48 hour age range. Informing providers of the optimal time frame to conduct screening and stressing the importance of early identification of CCHD will be a key part of provider education.

COMMENT #5: This comment pointed out discrepancies in language used between sections ARM 37.57.304(3) "7 days following birth" and ARM 37.57.305(2)(a) "7th day of life" indicating that they are two different time frames. This comment suggested revising the language to be consistent throughout the rules.

RESPONSE #5: The department agrees with this comment and has revised the proposed amendments to reflect consistent language.

COMMENT #6: This comment noted that the current amendments include time frames for bloodspot specimen collection and for when the specimen must be forwarded to the laboratory. However, these amendments do not address a time frame for when the specimen must arrive at the lab and when the results must be reported to the provider. If specimens do not arrive at the lab in a timely manner or if they are not reported to providers in a timely manner, treatment of the condition could be delayed, potentially leading to complications for the infant. This commenter suggested including time frames in the rules for when the specimen must arrive at the lab and when lab results must be reported to providers based on national recommendations.

RESPONSE #6: The newborn screening program is aware of the latest recommendations by the Secretary's Discretionary Advisory Committee on Heritable Disorders in Newborns and Children regarding the timeliness of newborn screening and welcomes this input from concerned citizens and groups. We are actively working with internal and external stakeholders to set and achieve similar performance standards for newborn screening in the state of Montana. Achieving

these performance standards may be addressed by administrative rule change, as in the suggested modifications to the current rule, as well as by programmatic quality improvement measures.

COMMENT#7: This comment noted that the amendments proposed in this rule are likely to have a significant impact on midwives in Montana. Not all midwives currently have pulse oximeters that can be used for CCHD screening and the equipment can be expensive. This comment requested support from the department to provide midwives with the education and resources necessary to complete newborn screening.

RESPONSE #7: The department agrees with this comment and will work with midwives to implement the rules.

5. These rule amendments are effective July 1, 2014.

/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 June 16, 2014

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 37.86.2801, 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)

TO: All Concerned Persons

1. On May 8, 2014, the Department of Public Health and Human Services published MAR Notice No. 37-678 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 950 of the 2014 Montana Administrative Register, Issue Number 9.

2. The department has amended ARM 37.86.2806, 37.86.2820, 37.86.2901, 37.86.3009, 37.86.3020, 37.86.3101, and 37.86.3105 as proposed.

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

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) through (6)(d) remain as proposed.

(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) remains as proposed.

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

(i) current ICD-40 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~~ 39 weeks for medical necessity;

(B) through (c)(ii) remain as proposed.

(8) All hospitals must use current ICD procedure codes for ~~both~~ inpatient claims and current CPT codes for 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

37.86.2902 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) through (8) remain as proposed.

(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) remains as proposed.

(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) and (ii) remain as proposed.

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

(c) if pregnancy care was not initiated prior to 20 weeks gestation, the gestational age may be documented from first day of the last menstrual period (LMP); and

(c) remains as proposed, but is renumbered (d).

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 (12) remain as proposed.

(13) "ICD-10-CM" means the International Classification of Diseases, Tenth Revision based on the official version of the World Health Organization's Tenth Revision for diagnosis coding, effective for dates of service or discharge date ~~October 1, 2014~~ October 1, 2015 and thereafter.

(13) through (21) remain as proposed, but are renumbered (14) through (22) as a result of renumbering in MAR Notice No. 37-665, effective 3/14/14.

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

37.86.3103 OUTPATIENT HOSPITAL SERVICES, CARDIAC REHABILITATION SERVICES (1) Cardiac rehabilitation services are limited to a maximum of two 1-hour sessions per day for up to 36 sessions, limited to the following cardiac events and diagnoses:

(a) through (d) remain as proposed.

(e) percutaneous transluminal coronary angioplasty (PTCA) or coronary stenting; ~~and~~

(f) heart valve repair or replacement; and

(g) chronic stable heart failure.

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

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

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

COMMENT #1: Three comments were made in support of the new pulmonary rehabilitation diagnosis changes for procedure code G0424; however, there was a concern of the previous diagnosis being removed for procedure codes G0237, G0238, and G0239.

RESPONSE #1: The department thanks the commenters for their support of the rule changes. The department intended the diagnosis changes to be in effect for procedure code G0424 only as per CMS guidelines; the proposed guidelines do not affect procedure codes G0237, G0238, and G0239.

COMMENT #2: Three comments stated that chronic heart failure should be on the list of allowable conditions for cardiac rehab as it is on the Centers for Medicare and Medicaid Services (CMS) guidelines, and expressed support of the other changes to both cardiac and pulmonary rehabilitation.

RESPONSE #2: Stable chronic heart failure will be added to ARM 37.86.3103 per CMS guidelines. The department thanks the commenter for their support of the rule.

COMMENT #3: One comment stated that pulmonary rehabilitation should not be a covered service, and that cardiac rehab should continue to have a time limit.

RESPONSE #3: The department is following CMS coverage guidelines on both pulmonary and cardiac rehab services.

COMMENT #4: One comment expressed support for the proposed amendments to the outpatient hospital cardiac and pulmonary rehabilitation rules.

RESPONSE #4: The department thanks the commenter for their support of the rule.

COMMENT #5: One comment expressed support for the department's amendments to the methodology for collecting any upper payment limit overages.

RESPONSE #5: The department thanks the commenter for their support of the rule.

COMMENT #6: One comment expressed that they understand that CMS has instructed the department to make specific calculations related to the measurement of costs related to the upper payment limit; the commenter disagrees with the guidelines set forth by CMS to the department.

RESPONSE #6: The department must follow CMS guidelines set forth regarding the upper payment limit measurement and all calculations related to cost measurement.

COMMENT #7: One comment expressed support of the reimbursement reduction for nonmedically necessary elective deliveries.

RESPONSE #7: The department thanks the commenter for their support of the rule.

COMMENT #8: One comment expressed concern with ICD-10 procedure codes being required on all claims in ARM 37.86.2801(7)(b)(i), and in ARM 37.86.3001(13) as of October 1, 2014.

RESPONSE #8: The ICD-10 wording was proposed prior to the enactment of the Protecting Access to Medicare Act of 2014, delaying the adoption of ICD-10 codes. The department plans to remove ICD-10 reference from the rule and replace it with the following wording: ARM 37.86.2801(7)(b)(i)- Current ICD inpatient procedure codes must be used on all inpatient hospital claims; and ARM 37.86.3001(13) - "ICD-10-CM" means the International Classification of Diseases, Tenth Revision based on the official version of the World Health Organization's Tenth Revision for diagnosis coding, effective for dates of service or discharge date October 1, 2015 and thereafter.

COMMENT #9: One comment expressed concern with the use of ICD-10 procedure codes being required on inpatient and outpatient claims in ARM 37.86.2801(8).

RESPONSE #9: The proposed changes do not state ICD-10 in ARM 37.86.2801(8); the wording states, "current ICD procedure codes."

COMMENT #10: One comment expressed concern with the use of ICD procedure codes on outpatient hospital claims in ARM 37.86.2801(8).

RESPONSE #10: The department will be changing the wording to add CPT codes for outpatient hospital claims. The wording will be changed to state: All hospitals must use current ICD procedure codes for inpatient hospital claims, and current CPT codes for outpatient hospital claims.

COMMENT #11: One commenter expressed concern with the use of condition code 83 in ARM 37.86.2801 for inductions or cesarean sections over 39 weeks. The commenter states that condition code 83 does not allow a facility to report if a cesarean section over 39 weeks was medically necessary.

RESPONSE #11: The department cannot change the wording of condition codes as the definitions come directly from the Uniform Billing Editor Manual and cannot be changed.

COMMENT #12: One commenter expressed support that elective deliveries prior to 39 weeks gestation are not appropriate.

RESPONSE #12: The department thanks the commenter for their support.

COMMENT #13: One commenter expressed concern over ARM 37.86.2801 and states that the department is denying elective cesarean sections. The commenter also states that they feel elective cesareans provide benefits and should be a decision made by the patient. The commenter also states physicians can tell patients that the department does not allow elective cesarean section delivery.

RESPONSE #13: The department does not state that elective cesarean sections are not allowed or will be denied payment; ARM 37.86.2801 states that nonmedically necessary cesarean sections will receive a 33% reduction in reimbursement.

COMMENT #14: One commenter stated that ACOG states full term, greater than 39 and 0/7 days gestation, elective inductions of labor are a viable option.

RESPONSE #14: The proposed changes affect only those inductions prior to 39 weeks gestation.

COMMENT #15: One commenter expressed concern for those members who seek hospital delivery services in an emergency situation, and stated that not all deliveries can be scheduled in advance.

RESPONSE #15: The proposed changes are intended for elective inductions and cesarean sections. An emergency situation is not an elective procedure.

COMMENT #16: Two commenters expressed concern with the changes to ARM 37.86.2902 requiring hospitals to have a policy for all births. The commenters felt requiring policies for non-Medicaid members was outside the scope of Medicaid.

RESPONSE #16: The department intends these proposed changes to apply only to Medicaid and are not intended to apply to non-Medicaid services.

COMMENT #17: One comment was concerned with the use of only the American College of Obstetrics and Gynecologists (ACOG) guidelines for determining gestational age, and that at times care is not begun until after 20 weeks gestation.

RESPONSE #17: The department has added an additional guideline to ARM 37.86.2902(9)(c); if pregnancy care was not initiated prior to 20 weeks gestation, the gestational age may be documented from the first day of the last menstrual period (LMP).

COMMENT #18: Three commenters expressed concern with the elective delivery changes and the distance that some women travel for pregnancy care in Montana.

RESPONSE #18: The department is following ACOG and Joint Commission guidelines on determining medical necessity, and distance from the chosen birthing center is not an ACOG or Joint Commission approved diagnosis for early induction.

COMMENT #19: Three commenters questioned the appeals process for claims that receive a reduced reimbursement for elective deliveries.

RESPONSE #19: The appeals process for these claims is the same as for any claim for medical necessity that Montana Medicaid currently processes.

COMMENT #20: Two commenters expressed concern over using the ACOG guidelines for determining weeks of gestation, and expressed that two of the three guidelines are not used in practice.

RESPONSE #20: The changes to ARM 37.86.2902 state that only one of the criteria must be met to confirm gestational age; the hospital can choose which of the criteria they want to meet.

A large number of comments received were not applicable to the rules being amended in this notice; therefore, they are not being responded to in this notice.

5. These rule amendments are effective July 1, 2014.

/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 June 16, 2014

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF DECISION ON
ARM 42.2.613, 42.2.614, 42.2.615,) PROPOSED AMENDMENT
42.2.616, 42.2.617, 42.2.618,)
42.2.619, 42.2.620, and 42.2.621)
pertaining to dispute resolution)

TO: All Concerned Persons

1. On June 12, 2014, the Department of Revenue published MAR Notice No. 42-2-908 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 1177 of the 2014 Montana Administrative Register, Issue Number 11.

2. The department has decided to cancel the public hearing on the proposed amendment of the above-stated rules that was scheduled for July 8, 2014, at 9:00 a.m., at the Department of Revenue in the Third Floor Reception Area Conference Room of Sam W. Mitchell, at Helena, Montana.

3. The department has determined that further review of the proposed amendments is necessary before proceeding with the public hearing. The department will re-notice these rules for public participation at a later date.

/s/ Cleo Anderson (for)
Laurie Logan
Rule Reviewer

/s/ Mike Kadas
Mike Kadas
Director
Department of Revenue

Certified to the Secretary of State June 16, 2014.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the Petition of the City	)	Docket No. DO 14-14
of Billings and Montana-Dakota)	
Utilities Co. for a Declaratory Ruling)	
that the capture and processing of	)	DECLARATORY RULING
landfill gas at the Billings Regional)	
Landfill is not subject to taxation)	
under Montana's oil and gas)	
production tax, Sections)	
15-36-301, MCA, <i>et seq.</i>)	

INTRODUCTION

1. The Department has received a Petition for Declaratory Ruling. The question presented is whether the landfill gas captured and processed by Montana-Dakota Utilities Co. at the Billings Regional Landfill is subject to Montana's oil and gas production tax. Sections 15-36-301, MCA, *et seq.* The Petition and any other documents submitted or representations made comprise the Department's records of this declaratory ruling proceeding, as provided by ARM 42.2.105. This ruling will be published pursuant to 2-4-501, MCA.

FACTS

2. The Petition sets forth the following pertinent facts:

(a) The City of Billings ("City") is the largest incorporated city in the State of Montana. Its estimated population in 2012 is 106,954. Approximately 16 percent of the entire population of the State of Montana resides in the Billings metropolitan area.

(b) Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., ("Montana-Dakota") is a combination gas and electric utility serving eastern Montana, North Dakota, western and central South Dakota, and northeastern Wyoming. The City of Billings is the largest city in Montana-Dakota's service territory.

(c) The City owns and operates the Billings Regional Landfill. It is the largest landfill in the State of Montana, and serves five Montana counties. Its landfill site encompasses 800 acres, of which 250 acres are currently permitted to receive garbage (waste).

(d) The garbage placed in a landfill rots and decays over time, producing landfill gas. By volume, methane gas, a potent greenhouse gas, makes up approximately half of the total volume of landfill gas emitted by the Billings Regional Landfill. Landfill gas must either be vented into the atmosphere, or captured and disposed of through an alternative means.

(e) Under federal law, landfills emitting above a certain level of landfill gas are required to capture their landfill gas, and dispose of it through a means other

than venting into the atmosphere. The Billings Regional Landfill is not currently required to capture its landfill gas. However, as the largest landfill in Montana, it is likely to eventually reach the size where it is required by federal law to capture its landfill gas.

(f) The City and Montana-Dakota have entered into an agreement under which Montana-Dakota has agreed to capture landfill gas emitted by the Billings Landfill, and process it into a useable commodity. It has installed in the Billings Landfill vertical and horizontal piping which collects the landfill gas and moves it to a processing unit that extracts the methane gas and any liquids, and burns the remainder of the landfill gas. A blower at the processing unit produces negative pressure in the installed piping, allowing the landfill gas to flow into the piping and to the processing unit. The processed landfill gas, which has been reduced to methane gas, can then be used as a supplement to the natural gas used by Montana-Dakota's gas customers, or sold as a special transportation fuel.

ANALYSIS

3. The question presented by this Petition for Declaratory Ruling is whether the landfill gas captured and processed by Montana-Dakota at the Billings Regional Landfill is subject to Montana's oil and gas production tax. Sections 15-36-301, MCA, *et seq.*

4. Sections 15-36-301, MCA, *et seq.*, provide for the taxation of the production of oil and natural gas. Pursuant to 15-36-303(10), MCA, "natural gas" is defined as "natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead." Section 15-36-304(2), MCA, imposes tax rates upon the production of natural gas.

5. Sections 15-36-301, MCA, *et seq.*, do not expressly limit its definition of "natural gas" to definitions set forth in code sections governing other agencies. While the Petitioners contend that the Department should couple its definitions with those set forth in 82-11-101, MCA, *et seq.*, Petitioners' argument to do so may result in far reaching effects not contemplated by the Legislature. Additionally, the analysis below demonstrates that Petitioners' suggestion is unnecessary.

6. Section 15-36-304(8), MCA, provides that "(a)ny interest in production owned by the state or a local government is exempt from taxation under this section." Based upon the facts presented above, the City of Billings owns the natural gas produced at the Billings Regional Landfill. The City of Billings is a local government entity. Thus, because the gas is owned by a local government entity, any production of natural gas from the landfill is exempt from the tax set forth in 15-36-301, MCA, *et seq.*

DECLARATORY RULING

7. We rule, based on the particular facts and circumstances of this case, that the Department interprets 15-36-304(8), MCA, as applicable to the natural gas produced from the Billings Regional Landfill and that is owned by the City of Billings. The Department therefore grants Petitioners' request that such gas is exempt from taxation under the Montana Oil and Gas Production tax. This ruling applies only as long as there is no change in a material fact on which this determination is based.

Dated this 3rd day of June, 2014.

MONTANA DEPARTMENT OF REVENUE

/s/ Mike Kadas
MIKE KADAS
Director

NOTICE: Petitioners have the right to appeal the decision of this agency by filing a petition for judicial review in district court within 30 days after service of this decision. Judicial review is conducted pursuant to 2-4-702, MCA.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 3rd day of June, 2014, a true and accurate copy of the foregoing *Declaratory Ruling* was served by placing same in the U.S. mail, postage prepaid, addressed as follows:

Brent Brooks
OFFICE OF THE CITY ATTORNEY
210 North 27th Street
Billings MT 59101

John Alke
HUGHES, KELLNER, SULLIVAN & ALKE, PLLP
40 W. Lawrence, Suite A
PO Box 1166
Helena MT 59624-1166

/s/ Dianne Page
DIANNE PAGE
Paralegal

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through March 31, 2014. This table includes those rules adopted during the period April 1, 2014, through June 30, 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 March 31, 2014, 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 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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- I Military Training or Experience, p. 571, 1264

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in May 2014 appear. Vacancies scheduled to appear from July 1, 2014 through September 30, 2014, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of June 1, 2014.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM MAY 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Adult Interstate Compact Commissioner (Corrections)			
Ms. Pamela Bunke Helena	Governor	reappointed	5/22/2014 0/0/0
Qualifications (if required): none specified			
Board of Dentistry (Labor and Industry)			
Dr. Dale R. Chamberlain Lewistown	Governor	reappointed	5/9/2014 4/1/2018
Qualifications (if required): Dentist			
Ms. Diane Klemann Billings	Governor	Porter	5/9/2014 4/1/2018
Qualifications (if required): Dental Hygienist			
Board of Labor Appeals (Labor and Industry)			
Ms. Leslie Thomas Boulder	Governor	Tropila	5/9/2014 1/1/2017
Qualifications (if required): Alternate			
Board of Plumbers (Labor and Industry)			
Mr. Timothy E. Regan Miles City	Governor	reappointed	5/22/2014 5/1/2018
Qualifications (if required): Master Plumber			
Mr. Sean Smith Anaconda	Governor	Stimac	5/22/2014 5/1/2018
Qualifications (if required): Journeyman Plumber			

BOARD AND COUNCIL APPOINTEES FROM MAY 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Real Estate Appraisers (Labor and Industry)			
Mr. George Simek Billings Qualifications (if required): Real Estate Appraiser	Governor	reappointed	5/22/2014 5/1/2017
Mr. Thomas G. Stevens Missoula Qualifications (if required): Real Estate Appraiser	Governor	reappointed	5/22/2014 5/1/2017
Board of Regents of Higher Education (Education)			
Ms. Mariah Williams Missoula Qualifications (if required): Student Regent	Governor	Rogala	5/22/2014 6/30/2015
Board of Respiratory Care Practitioners (Labor and Industry)			
Mr. William Carmichael Great Falls Qualifications (if required): Respiratory Care Practitioner	Governor	Falling	5/22/2014 1/1/2015
Future Fisheries Review Panel (Fish, Wildlife and Parks)			
Ms. Karin Boyd Bozeman Qualifications (if required): Private Sector Fisheries Restoration Professional	Governor	Gavin	5/16/2014 7/1/2016
Public Defender Commission (Administration)			
Ms. Bonnie Olson Marion Qualifications (if required): Public Representative nominated by the Speaker of the House	Governor	not listed	5/9/2014 7/1/2016

BOARD AND COUNCIL APPOINTEES FROM MAY 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Public Safety Officer Standards and Training Council (Justice)			
Ms. Gina Dahl Havre	Governor	Boggen	5/22/2014 1/1/2015
Qualifications (if required): County Attorney			
State Emergency Response Commission (Military Affairs)			
Mr. Walt Kerttula Helena	Governor	Richman	5/9/2014 10/1/2015
Qualifications (if required): Department of Transportation Representative			
Ms. Tara Moore Bozeman	Governor	Vogel	5/9/2014 10/1/2015
Qualifications (if required): University System Representative			
State Library Commission (Education)			
Ms. Anne Kish Twin Bridges	Governor	Quillan	5/22/2014 6/1/2017
Qualifications (if required): Public Representative			
Ms. Aaron LaFromboise Browning	Governor	Miller	5/22/2014 6/1/2017
Qualifications (if required): Public Representative			
Mr. Bruce Newell Helena	Governor	Hunter	5/22/2014 5/22/2016
Qualifications (if required): Public Representative			

BOARD AND COUNCIL APPOINTEES FROM MAY 2014

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Workforce Investment Board (Labor and Industry)			
Mr. Paul Gatzemeier Billings	Governor	not listed	5/9/2014 7/1/2017
Qualifications (if required):	Private Sector		
Ms. Billie Lee Ronan	Governor	not listed	5/9/2014 7/1/2017
Qualifications (if required):	Private Sector		
Mr. Scott Trent Missoula	Governor	not listed	5/9/2014 7/1/2017
Qualifications (if required):	Private Sector		
Western Interstate Commission on Higher Education (Education)			
Ms. Florence Lucas Missoula	Governor	reappointed	5/22/2014 7/1/2018
Qualifications (if required):	Legislator		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Aging Advisory Council (Public Health and Human Services) Rep. Beverly Barnhart, Bozeman Qualifications (if required): public representative</p>	Governor	7/18/2014
<p>Mrs. Jessie James-Hawley, Harlem Qualifications (if required): public representative</p>	Governor	7/18/2014
<p>Ms. Lauren Lynch, Butte Qualifications (if required): public representative</p>	Governor	7/18/2014
<p>Mr. Marvin Carter, Laurel Qualifications (if required): public representative</p>	Governor	7/18/2014
<p>Agriculture Development Council (Agriculture) Mr. Bill Koenig, Kalispell Qualifications (if required): agriculture producer</p>	Governor	7/1/2014
<p>Ms. Patricia Quisno, Harlem Qualifications (if required): agriculture producer</p>	Governor	7/1/2014
<p>Mr. David Tyler, Belgrade Qualifications (if required): agriculture producer</p>	Governor	7/1/2014
<p>Alternative Health Care Board (Labor & Industry) Ms. Mary Anne Brown, Great Falls Qualifications (if required): midwife</p>	Governor	9/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Alternative Health Care Board (Labor & Industry) cont. Ms. Phyllis Lefohn, Clancy Qualifications (if required): public representative</p>	Governor	9/1/2014
<p>Board of Banking (Administration) Dr. Maureen J. Fleming, Missoula Qualifications (if required): public representative</p>	Governor	7/1/2014
<p>Mr. Josh Webber, Denton Qualifications (if required): state bank officer</p>	Governor	7/1/2014
<p>Board of Funeral Service (Labor and Industry) Mr. R.J. Dick Brown, Lewistown Qualifications (if required): mortician</p>	Governor	7/1/2014
<p>Board of Hearing Aid Dispensers (Labor and Industry) Mr. Wyman McDonald, Ronan Qualifications (if required): public representative with a hearing aid</p>	Governor	7/1/2014
<p>Ms. Mary Eve Tolbert, St. Ignatius Qualifications (if required): dispenser with master's degree and national certification</p>	Governor	7/1/2014
<p>Board of Medical Examiners (Labor and Industry) Dr. Anna Earl, Chester Qualifications (if required): doctor of medicine</p>	Governor	9/1/2014
<p>Dr. Nathan Thomas, Missoula Qualifications (if required): podiatrist</p>	Governor	9/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Medical Examiners (Labor and Industry) cont. Dr. Bruce Hayward, McAllister Qualifications (if required): osteopath	Governor	9/1/2014
Board of Nursing (Labor & Industry) Ms. Brenda Schye, Fort Peck Qualifications (if required): public representative	Governor	7/1/2014
Ms. Kathleen Sprattler, Billings Qualifications (if required): licensed practical nurse	Governor	7/1/2014
Mr. N. Gregory Kohn, Billings Qualifications (if required): public representative	Governor	7/1/2014
Ms. Lanette Perkins, Missoula Qualifications (if required): registered nurse	Governor	7/1/2014
Board of Pharmacy (Labor and Industry) Ms. Rebecca H. Deschamps, Missoula Qualifications (if required): licensed pharmacist	Governor	7/1/2014
Mr. Michael Bertagnolli, Three Forks Qualifications (if required): licensed pharmacist	Governor	7/1/2014
Board of Physical Therapy Examiners (Labor and Industry) Mr. Brian Miller, Kalispell Qualifications (if required): physical therapist	Governor	7/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Private Security (Labor and Industry) Mr. Raymond Murray, Missoula Qualifications (if required): POST representative	Governor	8/1/2014
Mr. James Thomas, Helena Qualifications (if required): Public Safety Officer Standards and Training Council	Governor	8/1/2014
Ms. Holly Dershem-Bruce, Glendive Qualifications (if required): public representative	Governor	8/1/2014
Board of Professional Engineers and Land Surveyors (Labor and Industry) Rep. Hal Jacobson, Helena Qualifications (if required): public representative	Governor	7/1/2014
Mr. David Elias, Anaconda Qualifications (if required): licensed land surveyor	Governor	7/1/2014
Mr. Ronald Drake, Helena Qualifications (if required): licensed chemical engineer	Governor	7/1/2014
Board of Psychologists (Labor and Industry) Dr. George Watson, Bozeman Qualifications (if required): private practice psychologist	Governor	9/1/2014
Dr. Stuart Hall, Missoula Qualifications (if required): psychologist/teacher	Governor	9/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Public Accountants (Labor & Industry)		
Mr. Michael Johns, Deer Lodge Qualifications (if required): Certified Public Accountant	Governor	7/1/2014
Mr. Tony Ennenga, Kalispell Qualifications (if required): Certified Public Accountant	Governor	7/1/2014
Ms. Kathleen VanDyke, Bozeman Qualifications (if required): public representative	Governor	7/1/2014
Mr. Wayne Hintz, Helena Qualifications (if required): Certified Public Accountant	Governor	7/1/2014
Board of Radiologic Technologists (Labor and Industry)		
Ms. Sharon Dinstel, Colstrip Qualifications (if required): public representative	Governor	7/1/2014
Ms. Anna L. Hazen, Fort Benton Qualifications (if required): permit holder	Governor	7/1/2014
Dr. Jesse Cole, Butte Qualifications (if required): radiologist	Governor	7/1/2014
Ms. Janet Fuller, Anaconda Qualifications (if required): Radiologic Technologist	Governor	7/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Board of Research and Commercialization Technology (Commerce) Mr. Leonard Smith, Billings Qualifications (if required): Native American Public Representative</p>	Governor	7/1/2014
<p>Board of Sanitarians (Labor and Industry) Mr. Donald E. Pizzini, Great Falls Qualifications (if required): public representative</p>	Governor	7/1/2014
<p>Ms. Kathleen Driscoll, Hamilton Qualifications (if required): public representative</p>	Governor	7/1/2014
<p>Mayor Gene Townsend, Three Forks Qualifications (if required): public representative</p>	Governor	7/1/2014
<p>Ms. Susan K. Brueggeman, Polson Qualifications (if required): sanitarian</p>	Governor	7/1/2014
<p>Board of Veterans' Affairs (Military Affairs) Mr. Michael Hagenlock, Helena Qualifications (if required): Public Health and Human Services Representative</p>	Governor	8/1/2014
<p>Ms. Sylvia Beals, Forsyth Qualifications (if required): veteran from Region 4</p>	Governor	8/1/2014
<p>Mr. Harry LaFriniere, Florence Qualifications (if required): veteran from Region 1</p>	Governor	8/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Veterans' Affairs (Military Affairs) cont. Ms. Mary Creech, Butte Qualifications (if required): veteran from Region 2	Governor	8/1/2014
Mr. Bernard Jacobs, Helena Qualifications (if required): representative of Public Health and Human Services	Governor	8/1/2014
Dr. Trena Bonde, Fort Harrison Qualifications (if required): representative of the Department of Military Affairs	Governor	8/1/2014
Board of Veterinary Medicine (Labor and Industry) Dr. Bruce Sorensen, Belgrade Qualifications (if required): veterinarian	Governor	7/31/2014
Burial Preservation Review Board (Administration) Mr. Conrad Fisher, Busby Qualifications (if required): representative of the Northern Cheyenne Tribe	Governor	8/22/2014
Mr. Morris Belgard, Hays Qualifications (if required): representative of the Fort Belknap Indian Community	Governor	8/22/2014
Mr. Videl Stump Sr., Box Elder Qualifications (if required): representative of the Chippewa Cree Historic Preservation Committee	Governor	8/22/2014
Dr. Ruthann Knudson, Great Falls Qualifications (if required): archaeological association	Governor	8/22/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Burial Preservation Review Board (Administration) cont. Mr. Terry Bullis, Hardin Qualifications (if required): representative of the coroner's association	Governor	8/22/2014
Mr. Henry Anderson, Helena Qualifications (if required): representative of the Little Shell Tribe	Governor	8/22/2014
Mr. Richard White Clay Sr., Crow Agency Qualifications (if required): representative of the Crow Tribe	Governor	8/22/2014
Clinical Laboratory Science Practitioners (Labor and Industry) Ms. Alison Mizner, Kalispell Qualifications (if required): licensed pharmacist	Governor	7/1/2014
Community Service Commission (Labor and Industry) Mr. James B. Corson, Billings Qualifications (if required): representative with experience in promoting volunteerism	Governor	7/1/2014
Mr. James Steele, Arlee Qualifications (if required): representative of Tribal government	Governor	7/1/2014
Mr. Jack Chambers, Missoula Qualifications (if required): representative of a non-profit organization	Governor	7/1/2014
Mr. David Van Son, Great Falls Qualifications (if required): expert in public safety services	Governor	7/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p>Community Service Commission (Labor and Industry) cont. Mr. Dustin Whitford, Box Elder Qualifications (if required): Representing Tribal Government</p>	Governor	7/1/2014
<p>Economic Development Advisory Council (Commerce) Mr. Brent Campbell, Missoula Qualifications (if required): Public Representative</p>	Governor	7/23/2014
<p>Director Sheila Hogan, Helena Qualifications (if required): public representative</p>	Governor	7/23/2014
<p>Mr. Curt Starr, Billings Qualifications (if required): public representative</p>	Governor	7/23/2014
<p>Ms. Kathie Bailey, Lewistown Qualifications (if required): public representative</p>	Governor	7/23/2014
<p>Mr. Walter White Tail Feather, Poplar Qualifications (if required): public representative</p>	Governor	7/23/2014
<p>Rep. Julie E. French, Scobey Qualifications (if required): Great Northern Development Corporation Regional Representative</p>	Governor	7/23/2014
<p>Electrical Board (Labor and Industry) Mr. Rick Hutchinson, Black Eagle Qualifications (if required): licensed electrician</p>	Governor	7/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Future Fisheries Review Panel (Fish, Wildlife and Parks)		
Mr. Marvin Miller, Butte	Governor	7/1/2014
Qualifications (if required): mining reclamation expert		
Mr. Alan Johnstone, Wilsall	Governor	7/1/2014
Qualifications (if required): commercial agriculture representative		
Mr. Jim Stone, Ovando	Governor	7/1/2014
Qualifications (if required): irrigated agriculture representative		
Historical Society Board of Trustees (Historical Society)		
Ms. Lee Rostad, Martinsdale	Governor	7/1/2014
Qualifications (if required): public member		
Mr. Jim Court, Billings	Governor	7/1/2014
Qualifications (if required): public member		
Mr. Jim Utterback, Helena	Governor	7/1/2014
Qualifications (if required): public member		
Mental Disabilities Board of Visitors (Governor)		
Mr. Graydon Davies Moll, Ronan	Governor	7/1/2014
Qualifications (if required): experience with the treatment and welfare of adults with developmental disabilities		
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture)		
Ms. Michelle Miller, Billings	Director	9/17/2014
Qualifications (if required): feed pellets/cube products representative		

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Noxious Weed Seed Free Forage Advisory Council (Agriculture) cont. Ms. Jennifer Cramer, Hysham Qualifications (if required): eastern county weed district representative	Director	9/17/2014
Mr. Tom Benson, Pablo Qualifications (if required): western county weed district representative	Director	9/17/2014
Mr. Steve Johns, Helena Qualifications (if required): forage producer representative	Director	9/17/2014
Montana Wheat and Barley Committee (Agriculture) Mr. Leonard Schock, Vida Qualifications (if required): District 7	Governor	8/20/2014
Mr. Frank Schoonover, Dutton Qualifications (if required): District 4	Governor	8/20/2014
Public Defender Commission (Administration) Mr. Kenneth R. Olson, Great Falls Qualifications (if required): attorney nominated by the Montana Supreme Court	Governor	7/1/2014
Ms. Ann Sherwood, Pablo Qualifications (if required): attorney nominated by the State Bar, experienced in defense of juvenile delinquency	Governor	7/1/2014
Mr. Christopher Daem, Billings Qualifications (if required): a member of an organization advocating on behalf of people with mental illness	Governor	7/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Statewide Independent Living Council (Public Health and Human Services) Ms. Mary Olson, Missoula Qualifications (if required): representing the Small Business Community	Governor	9/26/2014
Teachers' Retirement Board (Administration) Mr. Robert Pancich, Great Falls Qualifications (if required): public representative	Governor	7/1/2014
Telecommunications Access Services for Persons with Disabilities (Administration) Ms. Pat Ingalls, Butte Qualifications (if required): audiologist	Governor	7/1/2014
Ms. Char Harasymczuk, Billings Qualifications (if required): person with a hearing disability	Governor	7/1/2014
Mr. Charles Charette, Lame Deer Qualifications (if required): person with a hearing disability	Governor	7/1/2014
Mr. Drew Arnot, Missoula Qualifications (if required): independent local exchange company representative	Governor	7/1/2014
Tourism Advisory Council (Commerce) Mr. Paul Tuss, Havre Qualifications (if required): resident of Russell Country	Governor	7/1/2014
Mr. Ed DesRosier, East Glacier Park Qualifications (if required): resident of Glacier Country	Governor	7/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JULY 1, 2014 THROUGH SEPTEMBER 30, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (Commerce) cont. Ms. Gail Richardson, Bozeman Qualifications (if required): resident of Yellowstone Country	Governor	7/1/2014
Ms. Amber Wood-Jensen, Butte Qualifications (if required): resident of Goldwest Country	Governor	7/1/2014
Ms. Meg O'Leary, Big Sky Qualifications (if required): resident of Yellowstone Country	Governor	7/1/2014
Mr. Philip Aaberg, Chester Qualifications (if required): resident of Russell Country	Governor	7/1/2014
Ms. Stacey Kiehn, Charlo Qualifications (if required): Glacier Country Tourism Region	Governor	7/1/2014
Ms. Glenn Indreland, Bozeman Qualifications (if required): Yellowstone Country	Governor	7/1/2014
Mr. Matt Ellis, Missoula Qualifications (if required): Public Representative	Governor	7/1/2014