

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 24

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PUBLIC HEARING ON
2.5.201, 2.5.301, 2.5.302, 2.5.303,) PROPOSED AMENDMENT
2.5.404, 2.5.406, 2.5.408, 2.5.502,)
2.5.601, 2.5.602, 2.5.604, 2.5.610, and)
2.5.701 pertaining to state procurement)
of supplies and services)

TO: All Concerned Persons

1. On Friday, February 21, 2014, at 9:00 a.m., the Department of Administration will hold a public hearing in Room 53 of the Mitchell Building, 125 North Roberts Street, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Administration 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 Department of Administration no later than 5:00 p.m. on February 14, 2014, to advise us of the nature of the accommodation that you need. Please contact Jodi Gollehon, Department of Administration, P.O. Box 200135, Helena, Montana 59620-0135; telephone (406) 444-7210; fax (406) 444-2529; or e-mail jgollehon@mt.gov.

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

2.5.201 DEFINITIONS In ~~these rules~~ this chapter, words and terms shall have the same meaning as defined in Title 18, chapter 4, MCA, and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular rule, the following definitions apply:

(1) through (6) remain the same.

(7) "Central Stores Program" means the program within the State Procurement Bureau ~~proprietary program operated by the division's Property and Supply Bureau which that~~ develops standard specifications, and procures, ~~warehouses, and delivers~~ certain supplies for state agencies.

(8) "Controlled items" means those supplies and services ~~identified by the division as commonly used items which, when consolidated for purchasing purposes, result in volume adequate to obtain discounted prices.~~ an agency must purchase through the division, unless exempted via an agency delegation agreement. These include items from the "requisition time schedule," supplies and services available through exclusive term contracts, printing, and new vehicles.

(9) through (17) remain the same.

(18) "Hardware maintenance" means repairs, upgrades, or installation of hardware required for the hardware to continue to operate as originally specified in the contract or purchase order ~~necessary or to perform enhanced functions.~~

(19) and (20) remain the same.

(21) "Noncontrolled items" means all supplies and services that do not fall under the definition of "controlled items."

(21) through (23) remain the same, but are renumbered (22) through (24).

~~(24) "Property and Supply Bureau" means the bureau of the division which is responsible for the Central Stores Program and for operating the state and federal surplus programs for eligible donees.~~

(25) through (33) remain the same.

(34) "Software" means the collection of computer programs and related data that provide the instructions telling a computer what to do. Program software performs the function of the program it implements, either by directly providing instructions to the computer hardware or by serving as input to another piece of software.

~~(34)(35) "Software maintenance" means patches, enhancements, fixes, support, or upgrades that will allowing the software to continue to function as originally specified in the statement of work, or to perform enhanced functions within the original scope of the system.~~

(35) and (36) remain the same, but are renumbered (36) and (37).

(37)(38) "State Procurement Bureau" means the bureau of the division's bureau responsible for procuring or supervising the procurement of all supplies and services needed by the state, excluding those services procured by the Property and Supply Bureau and Print and Mail Services Bureau.

(39) "Surplus Property Program" means the program within the State Procurement Bureau that is responsible for managing the state and federal surplus property.

(38) and (39) remain the same, but are renumbered (40) and (41).

(42) "Term contract" means a contract in which supplies or services may be purchased through a list of prequalified vendors or at a predetermined unit price or discount for a specific period of time.

(40) and (41) remain the same, but are renumbered (43) and (44).

(45) "Upgrade" means a replacement of hardware, software, or firmware with a newer version in order to bring the system up to date or to improve its characteristics.

(42) and (43) remain the same, but are renumbered (46) and (47).

AUTH: 18-1-114, 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: During a 2011 Legislative Audit, the auditors recommended to the General Services Division (division) the closing of the central stores warehouse and replacing it with a direct delivery office supply system. Following that recommendation, the division proposed to reduce the office supply administrative fee from 20 percent to 2 percent within House Bill 2, which was passed in the 2013 legislative session. This rate change effectively closed the central stores warehouse and created the Central Stores Program. Additionally, the Property and Supply Bureau, which included the central stores warehouse, has transitioned into the smaller, restructured Surplus Property

Program. Consequently, both the Central Stores Program and the Surplus Property Program were transferred to the State Procurement Bureau. The proposed deletion of (24), the proposed changes to (7), and the proposed addition of the new (39) reflect the effects of these transitions.

The changes to (18) and (35) and the addition of (34) and (45) are being proposed by the division to ensure that all computer maintenance agreements procured pursuant to ARM 2.5.604(6)(d) fall within the scope of the original contract. The division has faced situations where the previous definition of maintenance did not adequately describe what can or cannot be included in a maintenance agreement. The proposed changes will resolve that confusion. Specifically, the definitions of "software" and "upgrade" are industry-standard definitions. The division saw no need to deviate from these standard definitions. For the definition of "software maintenance," the proposed use of the word "patches" reflects how the industry refers to enhancements and fixes of software.

The division proposes to add the definitions of "noncontrolled items" and "term contract" under new (21) and (42), respectively. The division believes these definitions are necessary because both terms are found within ARM, but their definitions are not self-evident. Specifically, "noncontrolled items" is referenced in ARM 2.5.301(1) and "term contract" is referenced in ARM 2.5.603(4). The term "term contract" is well-established within the state and is an industry-standard term commonly used to describe indefinite government contracts. The proposed changes to (8) simplify the definition and update it to reflect the division's current list of items that state agencies must purchase through the division.

All other proposed changes are grammatical.

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) remains the same.

(2) Delegation and competitive procedures are not necessary for goods and services listed in 18-4-132(3), MCA. Additional exempted ~~the following~~ purchases include:

(a) remains the same.

(b) fees for those professions exempted by statute 18-4-132, MCA;

(c) through (i) remain the same.

(j) ~~training and~~ conference space rental and catering;

(k) remains the same.

(l) ~~food products produced in Montana, subject to the provisions of 18-4-132, MCA~~;

~~(m)(l) fees for placing an advertisement advertising placed in a publications or on radio, television, or other electronic means. media sources; fees for the ~~D~~development, design, and distribution of the advertisement advertising are not included in this exception;~~

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

AUTH: 18-4-221, MCA

IMP: 18-4-132, 18-4-221, 18-4-222, 18-4-302, MCA

STATEMENT OF REASONABLE NECESSITY: Rules may not unnecessarily repeat statutory language. 2-4-305(2), MCA. The "training" language in (2)(j) is being removed as it is already specified as an exemption under (2)(i). The language in (2)(l) being removed is already specified by statute.

The changes to (2)(m) are being proposed by the division to ensure that agencies understand which advertising costs are exempt from competitive solicitations and which are not. While fees for placing an advertisement are exempt, the costs associated with the development of the advertisement are not exempt under this proposed rule. The proposed changes clarify this distinction.

All other proposed changes are grammatical.

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION (1) All agencies ~~must~~ shall complete the division's requisition form when a state purchase order or contract is required from the division. The requisition must be signed or electronically approved by an authorized agency official, ~~and it. Only items of a like nature (items ordinarily procurable from the same single vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for:~~

~~(a) coarse paper, computer paper, computer software supported by Information Technology Services Division, fine paper, forms, flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the Property and Supply Bureau;~~

~~(b)(2) Requisitions for printing shall must be forwarded to the Print and Mail Services Bureau; and,~~

~~(c)(3) Requisitions for all supplies and services not listed above shall falling outside an agency's delegated authority must be forwarded to the State Procurement Bureau.~~

(2) and (3) remain the same, but are renumbered (4) and (5).

~~(4)(6)~~ The division may cancel a requisition if deemed appropriate for reasons such as, but not limited to, the following. The requisition:

(a) and (b) remain the same.

(c) has no evidence of approvals required in ~~(2)(4)~~; or

(d) remains the same.

(5) remains the same, but is renumbered (7).

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: Requisitions are no longer required to be combined on one form. This was a requirement from a prior computer system that was recently upgraded. The new system is not dependent upon the separation of billing and shipping addresses for each purchase order. The proposed changes to (1) represent that change in internal procedure.

As detailed in the reasonable necessity statement explaining the proposed changes to ARM 2.5.201, the Property and Supply Bureau has transitioned into the smaller, restructured Surplus Property Program. The proposed deletion of (1)(a)

reflects that transition.

All other proposed changes are grammatical.

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the division's Surplus Property Program ~~Property and Supply Bureau~~, agencies are responsible for receiving supplies and services procured on their behalf by the ~~department~~ division. "Receiving" means inspecting the supply or service and checking it against the contract to ensure that it is acceptable, complete, and in compliance with the terms of the contract.

(2) and (3) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

STATEMENT OF REASONABLE NECESSITY: As detailed in the reasonable necessity statement explaining the proposed changes to ARM 2.5.201, the Property and Supply Bureau has transitioned into the smaller, restructured Surplus Property Program. The proposed changes reflect that transition.

2.5.404 BID AND PROPOSAL PREPARATION (1) Any exceptions to the specifications on the part of the bidder or offeror must be clearly indicated identified and communicated to the procurement officer consistent with the instructions listed within the solicitation. Exceptions may be rejected.

(2) remains the same.

(3) The price for each item must be stated and ~~shall be clearly shown~~ clearly listed in the ~~space provided on the form included as part of the bid~~. Only one unit price ~~shall~~ may be shown for each item unless ~~a specific provision is made in the form~~ for an optional figure is provided. The price of each item ~~shall~~ must be extended to show the total price for the quantity requested. In case of error in extension, the unit price ~~shall~~ prevails.

(4) Alternate bids may be accepted if the bidder ~~submitting an alternate~~ is the lowest responsive bidder on its primary bid and the bids are clearly marked "primary" or "alternate."

(5) Item-by-item unit price bids must be submitted and will receive primary consideration for award. All-or-none bids may be submitted as alternatives and will be considered if ~~clearly~~ in the best interest of the state.

(6) Unless stated otherwise in the solicitation, payment will be due 30 calendar days from:

(a) and (b) remain the same.

(7) Vendors may quote a cash discount based on early payment; ~~however,~~ Such discounts will may not be considered; ~~however,~~ in determination of low bid or contract award, ~~and~~ payment terms will remain as stated in (6), unless the bid or proposal ~~specified~~ provided otherwise.

(8) Vendors ~~must offer a firm price~~ shall guarantee their bid price for 30 calendar days after a bid opening, ~~or~~ 120 calendar days after a proposal opening, pending award, ~~unless otherwise provided for in the solicitation invitation for bids or request for proposals~~.

(9) Unless otherwise specified in the solicitation invitation for bids or request for proposals, all bids and proposals shall must show the delivered price FOB destination to the agency, including all transportation and handling charges.

AUTH: 18-4-221, MCA
IMP: 18-4-221, 18-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: The changes proposed in (1) are necessary to clarify to vendors when and to whom they must notify of any exceptions to the solicitation they are disputing. The division has experienced situations in which vendors have taken exception to a solicitation only after the solicitation has closed and evaluations are in progress. This has resulted in numerous setbacks within the procurement process, causing contracts to be postponed and/or solicitations to be reissued to the detriment of the contracting agency.

All other proposed changes are grammatical or provide clearer or simpler language.

2.5.406 VENDOR BIDDER, OFFEROR, OR CONTRACTOR PROTEST

~~(1) Except for small purchases or limited solicitations made pursuant to 18-4-305, MCA, a bidder, offeror, or contractor aggrieved in connection with the solicitation, award, or administration of a contract may protest to the department. Protests involving a solicitation or award must follow the provisions of 18-4-242, MCA. The All protests must be in writing and state in detail all of the protestor's objections and allegations of violations of the Montana Procurement Act. The complete protest must be submitted to the General Services Division, P.O. Box 200135, Helena, MT 59620-0135, and to the agency that issued the solicitation, if different, no later than the close of business 14 calendar days after the execution of the contract in question.~~

~~(2) The department may exercise its discretion when it decides in deciding what is in the best interest of the state.~~

~~(2) In the event the protest concerns the administration of an existing contract, the protesting party must follow the protest procedure set out in the contract. If there is no procedure stated in the contract, the protesting party must submit a protest in writing no later than 14 days after the cause of action, question, or dispute has arisen. If the protest is not resolved by mutual agreement, the department shall issue a written decision on the protest within 30 days after the receipt of the protest. In issuing the final decision, the decision must:~~

~~(a) state the reason for the action taken by the department with regard to the contract; and~~

~~(b) inform the aggrieved party of the party's right to pursue judicial review under Title 18, chapter 1, part 4, MCA.~~

~~(3) remains the same.~~

AUTH: 18-4-221, 18-4-242, MCA
IMP: 18-1-402, 18-4-242, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed addition of "Bidder, Offeror, or Contractor" to the rule catchphrase is necessary because the rule applies to more than just vendors; the rule also applies to bidders, offerors, and contractors. The division also proposes to strike the repetitive language from the rule. Rules may not unnecessarily repeat statutory language. 2-4-305(2), MCA. The language that is being proposed for removal is already specified by statute.

The proposed additional language in (1) provides clarification to protestors that they must submit their protest to both the division and the issuing agency, if different. If the division does not handle the protest, the division believes that the issuing agency should receive its own copy of the protest to allow for greater efficiency and quicker processing.

All other proposed changes provide clearer language.

2.5.408 RECIPROCAL PREFERENCE (1) through (5) remain the same.
(6) Reciprocal preferences do not apply to term contracts.

AUTH: 18-1-114, 18-4-221, MCA
IMP: 18-1-102, 18-7-107, MCA

STATEMENT OF REASONABLE NECESSITY: Federal statute prohibits the use of reciprocal preferences when federal funding is involved. Term contracts are contracts entered into on behalf of all state agencies, the majority of which receive federal funds. It is impractical to apply reciprocal preferences to a solicitation in which agencies that receive federal funding may or may not use the term contract at some point during the contract term. The proposed addition of (6) will prevent the division from having to separate term contracts that will be utilizing federal funds from those that could potentially be utilizing federal funds, a virtually impossible undertaking.

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY
(1) through (7) remain the same.

~~(8) The division shall timely return to the contractor a~~All contract performance security, except bonds, must be returned to the contractor following notification to the division that:

(a) upon completion of the contract was satisfactorily completed; and
(b) if a warranty period is specified in the contract and no claims are pending under the warranty, then upon expiration of the warranty period; and
~~(b)~~(c) if the agency waives all rights and claims to the performance security as described in ARM 2.5.305.

(9) If the contract was established by the division, agencies requiring contract security shall provide written notification to the division within 30 calendar days from the expiration of the contract stating that:

(a) the contract has been successfully performed;
(b) if a warranty period is specified in the contract, that no claims are pending under the warranty; and
(c) the agency waives all rights and claims to the contract security.
(10) If the contract was established within an agency's delegated authority,

the notification must be provided to the agency's contracting office.

AUTH: 18-4-221, 18-4-312, MCA

IMP: 18-1-201, 18-4-312, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed addition of (8)(b) is intended to provide a comprehensive list of those situations in which security would expire outside of the contract end date. The division believes this is important because state agencies are in need of clarification as to what their duties are when closing out contract security. The proposed addition of (9) is intended to provide agencies with a deadline for providing notification of contract security expiration. The proposed deadline will allow the division to promptly return all negotiable contract securities (cashier's checks, CDs, etc.) at the conclusion of the contract. It is critical that the division return those negotiable securities in which it no longer has a financial interest.

All other proposed changes are grammatical.

2.5.601 COMPETITIVE SEALED BIDS (1) through (11) remain the same.

(12) In the case if of a tie bid, the discretion of the division or the head of a purchasing agency will be used to resolve such bids, except that a bidder offering American-made products or supplies must be given preference.

(13) through (15) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed change to this rule is necessary to make a grammatical correction.

2.5.602 COMPETITIVE SEALED PROPOSALS (1) and (2) remain the same.

(3) The request for proposals must be prepared in accordance with ARM 2.5.601 and must ~~also~~ include:

(a) a statement ~~that allowing for optional discussions may be conducted with one or more offerors who submit proposals, but that proposals may be accepted and a contract issued without such discussions;~~ and

(b) and (4) remain the same.

(5) Facsimile transmission of a proposal is only acceptable on an exception basis with prior approval ~~of~~ from the procurement officer.

(6) remains the same.

(7) After the time established for receipt of proposals, a procurement officer shall open ~~the proposals~~ and inspect the proposals for material not available for public inspection pursuant to 18-4-304 and 18-4-308, MCA. The procurement officer ~~will~~ shall remove this material and ~~then make release~~ the remainder of the proposal ~~available~~ for public inspection. Offerors submitting a proposal containing a claim ~~to shield of confidentiality information~~ pursuant to 18-4-304, MCA, ~~must~~ shall include a statement that attests to the offeror's acceptance of the legal and financial

responsibility for defending the claim. ~~In addition, any~~ A claim to shield trade secret material must be made by an offeror's legal counsel using the affidavit form prescribed by the division.

(8) For the purpose of conducting discussions, proposals ~~shall~~ must be initially classified as responsive or nonresponsive.

(a) Proposals may be found nonresponsive at any time during the procurement process if:

(i) and (ii) remain the same.

(iii) the proposal ~~is~~ does not conform to ~~within the plans and specifications~~ described and required in the request for proposal.

(b) remains the same.

(9) Discussions including oral presentations, interviews, demonstrations, responses to specific questions, modifications, and ~~negotiations~~ contract refinement may be held with one or more offerors to:

(a) through (11) remain the same.

(12) The evaluation ~~shall~~ must be based on the evaluation criteria set forth in the request for proposals. ~~The evaluators shall exercise discretion in~~ In assigning points or value to a proposal, the evaluation requires the exercise of the evaluators' discretion, involving which involves a judgmental assessment of the evaluation criteria. If an award is made, it must be made to the responsive and responsible offeror whose proposal best meets the evaluation criteria.

(13) The department reserves the right to refine a contract before execution if doing so is ~~negotiate with one or more offerors for the award of a contract that is most advantageous to the state.~~ The department reserves the right to award a contract without negotiations or to reject any or all proposals.

(14) through (16) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed changes to (13) are the result of an internal policy shift away from contract negotiations to the more objective approach of contract refinement. The difference between contract refinement and negotiation is one of materiality. To negotiate a contract implies that substantial changes are being made to the contract, and the scope of contract has been affected. Refining a contract, however, implies minor, nonmaterial changes to the terms of the contract, such as a change in delivery dates or acceptance criteria. The department's experience in the past has been that the term "negotiating" is too broad and could undermine the procurement process by allowing contractors the opportunity to negotiate costs or additional work not included in the original bid or proposal. All requirements listed within a solicitation must remain neutral throughout the solicitation process in order to keep it fair and equitable.

All other proposed changes provide clearer or simpler language.

2.5.604 SOLE SOURCE PROCUREMENT (1) ~~The provisions of this~~ This rule ~~apply~~ applies to all sole source procurements of \$5,000 or greater unless exigency procurements described in ARM 2.5.605 are necessary.

(2) remains the same.

(3) For purchases with a total contract value greater than \$5,000, the determination as to whether a procurement shall be made as a sole source shall be made by the division, unless specifically authorized in a written agency delegation agreement. In cases of reasonable doubt, competition should be solicited. A request by a state agency to the division that a procurement be restricted to one vendor must be accompanied by a written justification using the "Sole Source Procurement Justification" form referenced in (5).

(4) remains the same.

(5) For the purpose of complying with 18-4-306, MCA, a record of sole source procurements greater than \$5,000 shall be maintained by the procuring agency using the "Sole Source Procurement Justification" form provided by the ~~department~~ division.

(6) remains the same.

(7) If an extension or renewal of a sole source contract is required, the agency shall provide the division with a justification form as provided in (5).

AUTH: 18-4-221, MCA

IMP: 18-4-306, MCA

STATEMENT OF REASONABLE NECESSITY: The addition of proposed new (7) is to clarify the requirement that state agencies provide justification for all sole source contract extensions and renewals, not just new sole source requests. The division has experienced issues with sole source requests no longer meeting the justification requirements at the time of renewal or extension. Requiring agencies to provide new justification for all sole source contract renewals and extensions allows the division to review each request relative to the current market for the good or service. It will provide for a more fair and open procurement process, which is required under the Montana Procurement Act. 18-4-122, et seq., MCA.

All other proposed changes are grammatical or provide minor clarifications.

2.5.610 COOPERATIVE PURCHASING (1) remains the same.

(2) For the purposes of complying with 18-4-221, MCA, the following definitions apply:

(a) "public authority" means an entity of a political subdivision of the state that is authorized to spend or receive public funds to further public interests;

(b) "educational institution" means any school system operating within the state that expends public funds for the procurement of supplies and services;

(c) "health institution" means an entity of a political subdivision of the state organized for the purpose of providing health care and related services and that expends public funds for the procurement of supplies and services;

(d) "other institution" means an entity of a political subdivision of the state that operates for a particular public purpose and that expends public funds for the procurement of supplies and services; and

(e) "any other entity that expends public funds for the procurement of supplies and services" means an Internal Revenue Code 501(c)(3) organization that expends public funds for the procurement of supplies and services.

(3) Nonprofit corporations that wish to enter into an agreement with the state for the cooperative use of supplies or services shall provide the division with documentation that they are or will be lawfully authorized to spend or receive public funds.

(4) Participation in any cooperative solicitation or contract is permitted if the following conditions are met:

(a) the division is able to provide adequate public notice of the solicitation to interested vendors; and

(b) any contract that the division opts to participate in must include all the statutorily required terms and conditions.

(5) If the conditions of (4)(a) and (4)(b) are not met, the division may reject participation in the cooperative solicitation or contract.

AUTH: 18-4-221, MCA

IMP: 18-4-401, 18-4-402, MCA

STATEMENT OF REASONABLE NECESSITY: The division is proposing to update the cooperative purchasing rule to ensure fair and equitable treatment of entities that participate in the procurement system while providing increased economy in contract pricing. To meet these goals, the division is proposing to more clearly define the types of organizations that are allowed to purchase from state contracts. State contracts are entered into with the specific purpose of saving taxpayer money. The division is proposing to clarify the statutory definition of "local procurement unit" as those organizations that are affiliated with the political subdivisions of the state (e.g., counties, cities, and towns) and that expend public funds. Only those organizations that fit the proposed definitions will be allowed to benefit from state contracts. The division is proposing this clarification because it is currently unclear and ambiguous as to which entities are permitted to participate in cooperative purchasing. For example, the statutory definition of "local public procurement unit" includes an "educational, health, or other institution." The phrase "other institution" is not defined, leaving both the division and prospective entities uncertain who would qualify under this phrase. In arriving at the definition of "other institution," the division reviewed the Montana Procurement Act's legislative history and accepted definitions of the word "institution." The legislative history did not shine light on the term.

The Montana Procurement Act was modeled after the American Bar Association's Model Procurement Code for State and Local Governments. The commentary for that part of the model code that addresses cooperative purchasing does not explain the meaning of "other institution." Under Montana law, words and phrases used in a statute are construed according to the context and the approved usage of the language. 1-2-106, MCA. Therefore, the division researched the definition of "institution." Generally, "institution" is defined as an organization, foundation, or the like devoted to the promotion of a particular cause or program, especially one of a public, charitable, or educational nature. See, e.g., Black's Law Dictionary; Dictionary.com. The division bases its proposed definition of "other institution" on the accepted definition of institution.

The Montana Procurement Act also includes as a local public procurement unit "any other entity that expends public funds for the procurement of supplies and services." 18-4-401, MCA. The division is proposing to define the phrase "any other entity" as an Internal Revenue Code 501(c)(3) organization. Such an organization is exempt from federal taxation if it exists for exempt purposes. These exempt purposes are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals. To qualify as a "local public procurement unit" the 501(c)(3) organization must also expend public funds for the procurement of supplies and services. The division is proposing to use the 501(c)(3) organization as the exemplar entity because generally these organizations fit well within the scope of the other listed entities that exist to promote the public interest and welfare and that expend public funds for services and supplies to accomplish their missions. The proposed addition of (3) will ensure that the division is complying with the statute's public funding requirement.

Finally, the division is proposing to limit the type and volume of cooperative contracts in which the state may participate. Broad-based competition must be balanced with a fair promotion of Montana and tribal businesses, large and small, to ensure the quality and integrity of the state's procurement system and that all statutorily required terms and conditions are included in any resulting contract. The decision to cooperatively purchase from/with a public procurement unit must be made after the state is assured that these purposes have been met.

If the proposed rule change is adopted, it will not affect any entity already admitted into the cooperative purchasing program nor will it affect any cooperative contract currently being utilized by the state.

The proposed amendments will implement 18-4-401, MCA, so it is necessary to add that as an implemented statute.

2.5.701 AUTHORITY TO DISPOSE OF SUPPLIES (1) State agencies may not transfer, sell, trade, or otherwise dispose of supplies owned by the state without written authorization of the Surplus Property Program ~~Property and Supply Bureau~~. A department or legislative or judicial entity may transfer surplus supplies between the various units of that department or legislative or judicial entity.

(2) remains the same.

AUTH: 18-4-226, MCA

IMP: 18-4-226, MCA

STATEMENT OF REASONABLE NECESSITY: As previously explained, the Property and Supply Bureau has transitioned into the smaller, restructured Surplus Property Program, necessitating this rule change.

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: Jodi Gollehon, Department of Administration, P.O. Box 200135, Helena, Montana 59620-0135; telephone (406) 444-7210; fax (406) 444-2529; or e-

mail jgollehon@mt.gov, and must be received no later than 5:00 p.m., February 21, 2014.

5. Jodi Gollehon, Department of Administration, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the 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 bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that these proposed rule amendments will not significantly and directly impact 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 December 16, 2013.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule	)	NOTICE OF PUBLIC HEARING
I pertaining to service of process and the	)	ON PROPOSED ADOPTION AND
amendment of ARM 2.59.301, 2.59.302,	)	AMENDMENT
2.59.303, 2.59.304, 2.59.305, and)	
2.59.306 pertaining to advertising, fee)	
disclosures and computation of interest,)	
credit insurance, fees to public officials,)	
receipt form, and licensee records)	
affecting consumer loan licensees)	

TO: All Concerned Persons

1. On January 17, 2014, at 10:00 a.m., the Department of Administration will hold a public hearing in Room 342 of 301 South Park, at Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

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 January 9, 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 proposed new rule provides as follows:

NEW RULE I SERVICE OF PROCESS (1) The written notice required under 32-5-207(1), MCA, constitutes process under the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA. The mailing of the notice to a person by certified mail under 32-5-207(2), MCA, constitutes effective "service of process" if a return receipt signed by the recipient, who need not be the same person as the addressee, has been returned to and retained by the department as proof of service.

(2) If a certified mail item mailed to a person other than an individual is returned to the department marked "unclaimed" after two notices to claim the item have been given by the United States Postal Service in accordance with established procedures for certified mail, the department shall have a sheriff or other process server attempt personal service upon the person at the same address for which the certified mail item went unclaimed. If that is unsuccessful, the department may, but is not required to, attempt personal service at any other address at which the department reasonably believes the person may be found. If personal service fails, the person is deemed to have been effectively served by operation of law under 32-5-207, MCA.

(3) If a certified mail item mailed to an individual is returned to the department marked "unclaimed," then the department may attempt service on the individual at the same address by regular mail with enclosed notice and acknowledgment of service under Rule 4(d)(3), Montana Rules of Civil Procedure (M.R.Civ.P.)

(4) If a certified mail item mailed to a person is returned to the department marked "undeliverable," "left no forwarding address," "forwarding address expired," or similar basis for nondelivery, the department shall use best efforts to locate another address for the person to be served and attempt service by certified mail there. If the certified mail item mailed to a person other than an individual is returned marked "unclaimed," the procedures in (2) apply. If a certified mail item mailed to an individual is returned marked "unclaimed," the procedures in (3) apply. If the certified mail item to a person other than an individual or a certified mail item to an individual is returned marked "undeliverable," "left no forwarding address," "forwarding address expired," or similar basis for nondelivery, the person or individual is deemed to have been effectively served by operation of law under 32-5-207, MCA.

(5) For purposes of this rule, "best efforts" means efforts that are reasonable under the totality of circumstances, i.e., reasonably calculated to give actual notice to the person being served. The term does not mean that heroic or extraordinary efforts must be made or that only actual notice by perfected Rule 4, M.R.Civ.P. service must ultimately be accomplished.

(6) Where there is no proof of perfected service under this rule, the department shall consider the following circumstances in determining whether to enter a person's default:

- (a) what attempts were made to perfect service;
- (b) whether and to what extent perfected service is practical in any given case;
- (c) whether any attempts were made to contact the person by telephone or means other than by mail;
- (d) whether the department knows that the person is located at a particular place other than the address(es) at which attempted service was made; and
- (e) whether the person has actual or imputed knowledge of the notice or the process or pendency of the administrative action without service having been perfected.

AUTH: 2-4-106, 32-5-401, MCA

IMP: 2-4-106, 32-5-207, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-106, MCA, states that except where a statute expressly provides to the contrary, service in all agency proceedings shall be as provided in the Montana Rules of Civil Procedure. The department has always deemed and interpreted the mailing of a notice of charges by certified mail under 32-5-207, MCA, to constitute service of process. A hearing examiner in one of the department's contested cases ruled that because the language in a statute very similar to 32-5-207, MCA, did not expressly state that mailing the notice of charges by certified mail constitutes "service of process," it did

not, therefore, constitute service of process. The hearing examiner ruled that personal service of the notice of charges under (4)(d)(2), M.R.Civ.P. was required to perfect service upon unlicensed persons that the department was prosecuting for allegedly making unlawful Internet payday loans in Montana. This rule is intended to give effect to the express provisions of 32-5-207, MCA, and the department's long-standing interpretation of that statute to the effect that sending a notice of charges by certified mail in contested cases arising under the Montana Consumer Loan Act is effective service of process.

In addition, the department believes that the law allows use of best efforts by administrative agencies to cause process to reach the person to be served, even if the certified mail item is returned as undeliverable as described in the rule. Under 32-5-207, MCA, the mailing of a notice by certified mail necessarily was intended to constitute service of process. If that were not true, then the requirement for mailing the notice of charges by certified mail under 32-5-207, MCA, would be an idle act because the notice (process) would already have been served under Rule (4)(d), M.R.Civ.P. if service under that rule were required. The law neither does nor requires idle acts. Section 1-3-223, MCA. Neither the Montana Consumer Loan Act nor the Montana Administrative Procedure Act states that if service by certified mail as provided in statute fails, service under Rule 4, M.R.Civ.P. is required. "Best efforts" service described in this rule is authorized in administrative cases by U.S. Supreme Court precedent. See, for example, *Dusenbery v. United States*, 534 U.S. 161, 122 S.Ct. 694, 151 L.Ed.2d 597 and *Jones v. Flowers*, 547 U.S. 220, 126 S.Ct. 1708, 164 L.Ed.2d 415, 2006 U.S. LEXIS 3451. This rule further identifies factors to be considered in determining whether a person's default may be taken where there is no evidence of perfected service but only "best efforts" that proved unsuccessful. The factors set out in this rule were adapted from those promulgated by an administrative agency in the state of Tennessee. *Johnson v. Tennessee Board of Nursing*, 2007 Tenn. App. LEXIS 116.

Based on the department's experience with unlawful Internet deferred deposit loans, businesses that make consumer loans via the Internet to Montanans without a license are also very unlikely to be successfully served by certified mail or by personal service. However, the department deems it important to take action to enforce Montana laws for the deterrent effect of doing so and to create a record of the unlawful activity and the persons engaged in it. All states are experiencing the same problems with respect to unlawful Internet lending and violations of state laws including but not limited to licensing laws. Not all Internet lending is unlawful, of course. Those Internet lenders meeting qualifications for licensure will be licensed and will be subject to examination by the department.

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

2.59.301 ADVERTISING (1) "Advertising" or "advertisement" means any written or oral statement or depiction that includes terms or availability of loans or that is designed to create interest in a consumer loan product and is conveyed in any manner or medium including but not limited to radio, television, telemarketing script and materials, on-hold script, upsell script, infomercials, the Internet, web

pages, cellular network, film, slide, audio program transmitted over a telephone system, label, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, letter, catalogue, poster, chart, billboard display, and promotional materials and items.

~~(1)~~(2) A licensee Licensees shall maintain a file of all copies or images of all of the licensee's advertising, (written, printed, radio, television, etc.) as defined in (1) for a period of at least 12 months after the last date of its the advertisement's use or until an examination of the licensee, including review of the advertising, has been accomplished by the Montana Consumer Loan Commissioner department, whichever occurs first. Advertising may be maintained in an electronic format that is capable of being reproduced in or converted to hard copy form. All advertising copy records must have the following information noted thereon:

(a) ~~All advertising copy shall have noted thereon~~ the name or names of all advertising media used and the dates when ~~such~~ the advertising publicly appeared; and

(b) the full text of audio and video ~~radio or television~~ advertising shall be retained.

~~(2) Licensees shall not use any advertising which is false, misleading or deceptive.~~

(3) ~~A licensee may~~ Licensees shall not use so-called blind advertisements as, for example, an advertisement giving only a telephone number, post office box or newspaper box number, or a name other than that of the licensee.

(4) ~~A licensee may~~ Licensees shall not use any advertising which is inconsistent with the ~~Federal or~~ Montana Unfair Trade Practices and Montana Consumer Protection Acts Act, Title 30, chapter 14, parts 1 and 2, MCA, or with federal laws including 15 USC 45(a)(1) or 15 USC 5(a)(1) or the regulations rules promulgated thereunder governing advertising.

(5) An unlicensed person may not directly or indirectly advertise terms or availability of consumer loans targeted at deriving profits from Montana markets. The prohibition against advertising by unlicensed persons is not dependent upon whether a loan application is submitted or whether a consumer loan is consummated as a result of the advertising. This section does not apply to media outlets and may not be construed to impose a duty on media outlets to verify licensure of advertisers.

AUTH: 32-5-401, MCA

IMP: ~~32-5-404~~ 32-5-309, MCA

STATEMENT OF REASONABLE NECESSITY: There is a need to update the rule to list by example modern forms of media that are currently used for advertising and are intended to be covered within the scope of the rule and to establish that electronically maintained advertising records are acceptable under the conditions identified in the rule. Section (2) is being deleted because it unnecessarily duplicates 32-5-309, MCA. The reference in (4) to the Federal Consumer Protection Act is being deleted because although there are many federal consumer protection laws and regulations, there is no federal act by that name. As a result, (4) does not put licensees on notice of what advertising practices may run afoul of federal law and, by extension, of this rule. Reference to the Federal

Consumer Protection Act is being replaced with citations to applicable federal law. The department believes that advertising the terms or availability of consumer loans by unlicensed persons must be proscribed in the same manner as consumer lending by unlicensed persons is proscribed. The department believes there is no reason for an unlicensed person to directly or indirectly advertise terms and availability of consumer loans targeted at Montana markets except to generate loan business for the unlicensed person. The amendments are also intended to curb Internet consumer loans being offered or made to Montana residents by unlicensed persons. The department believes that advertising targeted to Montana markets is an important factor in establishing the department's personal jurisdiction over unlicensed persons offering or making consumer loans to Montana residents. The implementation citation for this rule is being amended because 32-5-309, MCA, rather than 32-5-401, MCA, is the statute being implemented. Section 32-5-401, MCA, grants general rulemaking authority to the department and so it is properly cited as the authority for this rule. The remaining changes are needed to comply with rule drafting guidelines.

2.59.302 SCHEDULE OF CHARGES FEE DISCLOSURES – COMPUTATION OF INTEREST (1) At the time of filing an application for initial license or a renewal license Every applicant for license under the Montana Consumer Loan Act, the applicant shall file with the commissioner in duplicate, department a fee disclosure statement and a failure- or inability-to-pay disclosure statement, collectively referred to as "disclosure statements," unless otherwise specified. at the time of filing an application for a license, a full and accurate schedule of all charges, fees, and rate(s) of interest to be exacted in connection with any and all loans to be made by the applicant and the method of computing the same.

(a) The fee disclosure statement must contain:

(i) the interest rate or range of interest rates that the licensee charges for each type of loan product offered not to exceed the maximum allowed under 32-5-301(1), MCA;

(ii) known third-party fees and reasonable estimates of unknown third-party fees allowed under 32-5-301, MCA. Consumers may not be charged more than the third party's actual fee; and

(iii) examples of the total cost to the consumer for each type of loan product offered as follows:

(A) an example using the lowest available interest rate for the loan type including all third-party fees typically charged for that loan type; and

(B) an example using the highest interest rate chargeable for the loan type including all third-party fees typically charged for that loan type.

(b) The failure- or inability-to-pay disclosure statement must contain information about fees that may be charged during the term of the loan and afterwards arising from the consumer's failure or inability to pay as agreed under the terms of the loan agreement. The fee information that must be disclosed is:

(i) insufficient funds/dishonored check or check equivalent fee under 32-5-407, MCA;

(ii) past-due fee under 32-5-301, MCA, if provided for in the contract;

(iii) deferral/extension fee under 32-5-301, MCA, if provided for in the contract; and

(iv) reasonable attorney fees under 32-5-407, MCA, if provided for in the contract and if the licensee sues the consumer in a judicial action on the loan agreement and wins.

(2) The disclosure statements must be printed in black letters and numbers on a white background using a font style and size, type face, or similar graphics to call the consumer's attention to the information.

(3) The disclosure statements may, but need not, be combined in one document.

(2)(4) A licensee Licensees shall thereafter maintain on file with the commissioner department in duplicate a current schedule of all charges, fees, and rate(s) of interest to be exacted in connection with all loans to be made by the licensee current disclosure statement(s) and shall not exact charges, charge fees, or rate(s) of interest in excess of those contained in the schedule disclosure statements on file with the department or in excess of those authorized under Title 32, chapter 5, MCA. Currently dated, amended disclosure statements may be filed with the department at any time. Amended disclosure statements have only prospective application from the date of filing with the department. The disclosure statements in effect at the time a loan is made remain in effect for that loan until termination of the loan agreement unless:

(a) the loan is refinanced; or

(b) an express provision allowing modification of interest rate or fees during the term of the loan is contained in the loan agreement and authorized by law.

(3)(5) A licensee Licensees shall conspicuously display the schedule licensee's current disclosure statements at its business location(s) where loans to persons residing in Montana are negotiated or made, so as to be readily visible to prospective loan applicants before completion of a loan application begins, which shall include examples of principal, rate(s) of interest, monthly payments, and the contract period covered, prominently in each licensed place of business where loans are made or negotiated so as to be easily readable by borrowers and prospective borrowers.

(6) If a licensee conducts business through the Internet, the following information must be displayed to all online loan applicants residing in Montana on a web page that cannot be circumvented and must be viewed before completion of the loan application can begin:

(a) the licensee's name and license number (sometimes referred to as credential number or unique ID) exactly as they appear on the license; and

(b) the current disclosure statements that are filed with the department as required under this rule.

(4) Licensees may not make loans without having the schedule displayed.

(5) Licensees operating more than one licensed location in Montana shall advise the commissioner at which location or locations each schedule is to be used, if there is more than one schedule.

(6)(7) A licensee Licensees shall observe the following procedures in computing interest:

(a) interest shall must be computed at the applicable rate on the balance of the loan from the date of the previous payment to the date of the following payment; and

(b) ~~licensees shall compute~~ interest must be computed using a 365-day year, or in the case of a leap year a 366-day year, and by counting the actual number of days from one payment to the next.

~~(7) Licensees shall not fix the due date of the first installment on any loan contract providing for monthly installments, for a term exceeding 45 actual days from the date of loan.~~

(8) For purposes of implementing 32-5-301, MCA, Licensees shall interpret 32-5-301(2), MCA, of the Act "only once" to mean the phrase "only once" means on the same default; i.e., a. A borrower who defaults in one or more installment payments may be subject to a penalty one past-due fee as specified in 32-5-301(2), MCA, for each installment payment in default on which the borrower defaulted.

~~(9) Licensees shall not add to the amount of any balance, which remains after the terminal date of a loan contract, including extensions or charges for payments in default, interest or charges which in the aggregate exceed the legal rate authorized by 31-1-106, MCA.~~

AUTH: 32-5-401, MCA

IMP: ~~31-1-106~~, 32-5-301, MCA

STATEMENT OF REASONABLE NECESSITY: It is necessary to replace the term "commissioner" in this rule with the term "department" because the term "department" is defined in 32-5-102, MCA, and used throughout the Montana Consumer Loan Act in reference to the agency with responsibility for administering the Act. Consistent use of terminology will eliminate ambiguity. Section (2) is being added and section (5) is being amended to ensure that the disclosures are conspicuous, readily accessible to and identifiable by consumers who might comparison shop for loan products offered by multiple lenders. Section (4) is being amended so that licensees are on notice of what disclosure statements govern individual loans and so the department's examiners can verify that the fees being charged on loans are consistent with the fee disclosures in effect when the loan was made except as provided in that section. The required schedule of charges is being amended to include more detail and examples to assist consumers to better understand the costs of credit and ensure that the information is available to the consumer whether they do business with a licensee at its brick-and-mortar place of business or through the Internet as described in (6). The schedule of charges is being renamed to more closely reflect the rule content because the fee disclosures contain more information than a list of fees. The examples that must be included in the fee disclosures allow consumers to see the interplay of interest rates and fees in the context of available loan products which may assist them to better understand the actual cost of credit. The department believes the disclosures provide the information needed by consumers to make informed credit decisions and enable them to compare the loan products and fees available from various lenders. Section (7) is being deleted because it duplicates statute. In (8) the term "penalty" is being replaced with the term "past-due fee" because the latter term is used in 32-5-301,

MCA. Section (9) is being deleted because the intent of and need for the section is unclear and it is no longer consistent with applicable statutes. Section 31-1-106, MCA, is being removed from the implementation citations for this rule because 31-1-106, MCA, is no longer consistent with the Montana Consumer Loan Act, Title 32, chapter 5, MCA. The rule does not implement 31-1-106, MCA. The remaining amendments to this rule are needed for housekeeping and clarity purposes.

2.59.303 CREDIT LIFE INSURANCE (1) ~~Licensee shall not place credit life insurance nor credit disability insurance for its borrowers unless all applicable requirements of the Montana Insurance Code (Title 33, MCA) concerning licensing of agents are complied with. Any license acquired from the Commissioner of Insurance of the state of Montana must be conspicuously displayed in the office of licensee. A consumer loan licensee may not sell, solicit, or negotiate insurance or act as an insurance producer or insurance agency in this state unless licensed under Title 33, chapter 17, MCA. A consumer loan licensee holding an insurance producer or insurance agency license shall conspicuously display the insurance license in its main consumer loan office and shall comply with all applicable provisions of the Montana Insurance Code, Title 33, MCA.~~

~~(2) Licensee shall not place any credit life or disability insurance with an insurer who has not been authorized to transact such insurance in this state under the provision of the Montana Insurance Code.~~

~~(3)(2) A licensee may~~ Licensee shall not require any borrower or prospective borrower to purchase or contract for credit life insurance, or credit disability insurance, or loss of income insurance as a condition precedent to granting any loan.

~~(4)(3) A licensee~~ Licensee may advise borrowers or prospective borrowers or advertise generally and publicly that such insurance is credit life insurance, credit disability insurance, and loss of income insurance are available at additional cost to the borrower on loans meeting the requirements of (4).

~~(5) Licensee may advertise generally and publicly that credit life insurance and/or credit disability insurance is available to borrowers on loans of more than \$300 in principal amount exclusive of charges for insurance premiums.~~

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

~~(7) Licensee shall not make any loan including amounts advanced for insurance premiums that exceeds \$1,000 in total amount advanced. A licensee who has been issued a supplementary license shall not make any loan including amounts advanced for insurance premiums that exceeds \$2,500 in total amount advanced.~~

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

~~(9)(6) The individual insurance policy, the certificate of group insurance, the copy of the application for insurance, or the notice of proposed insurance, must be delivered to the borrower at the time the indebtedness is incurred, in accordance with the provisions of 33-21-204, MCA, and all the provisions of this law relative to and statements concerning the coverage provided must be strictly complied~~ comply with 33-21-204, MCA.

~~(10)(7) A licensee~~ Licensee must have on file for each credit life insurance, and credit disability insurance, and loss of income insurance transaction a signed statement from the borrower that procurement of such the insurance was not made

a condition precedent to the granting of the loan. ~~Such~~ The statement may be a part of the loan statement, certificate of group insurance, or application for insurance, if ~~such the~~ document is ~~to be~~ retained in the borrower's loan file for the ~~two years~~ two-year period required by 32-5-307, MCA. If a separate signed statement is used, ~~such the~~ statement must be retained in the borrower's loan file for the same period.

~~(11)(8)~~ (8) Refunds of unearned premiums for credit life insurance, and credit disability insurance, and loss of income insurance ~~shall be computed~~ must be made in accordance with the Montana Insurance Code (32-21-206, MCA) and regulations ~~issued by the Commissioner of Insurance of the state of Montana.~~

(12) remains the same, but is renumbered (9).

~~(13)(10)~~ (10) Before any credit life insurance or, credit disability insurance, or loss of income insurance premium is placed by a consumer loan licensee on any loan contract, the licensee must file with the ~~Consumer Loan Commissioner~~ department a statement containing the following information:

(a) remains the same.

(b) the rate of charge for premiums on ~~such the~~ insurance to be collected from the borrower, expressed in terms of dollars and cents per month (or per year) per one hundred dollars of original balance of the loan;

(c) borrower eligibility criteria for credit life insurance, credit disability insurance, and loss of income insurance ~~these borrowers who do not qualify for credit life or disability insurance because of advanced age or other stipulated reasons; and~~

(d) the basis or schedule upon which refunds to borrowers of unearned premiums are to be computed consistent with the refund formula filed with and approved by the Commissioner of Insurance under 33-21-206(2), MCA.

(14) remains the same, but is renumbered (11).

AUTH: ~~32-5-308~~ 32-5-401, MCA

IMP: ~~32-5-401~~ 32-5-306, 32-5-307, 32-5-308, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being amended to delete (2) and (5) because those sections unnecessarily duplicate 32-5-306(2) and (4), MCA, respectively. Newly numbered (3) is being amended to preserve the advertising clause that was contained in deleted (5). In addition, loss of income insurance is being added throughout the rule as a type of credit insurance that a borrower may purchase in connection with certain consumer loans. Section 32-5-306, MCA, was previously amended to add loss of income insurance to the other types of credit insurances authorized under the statute. The amendment to the rule is necessary to make the rule consistent with statute. Section (7) is being deleted because it is no longer consistent with statute. The former cap on the dollar amount of a consumer loan and the availability of supplementary licenses for licensees wishing to make larger loans were previously deleted from 32-5-201, MCA. In 2010, ARM 2.59.307 pertaining to dollar amounts of loans to which consumer loan rates applied was repealed, but (7) of this rule containing requirements that are dependent upon loan amounts and supplemental licenses was not deleted at that time. In (9) the term "strict compliance" is being replaced by the term "compliance." The department believes there is no difference between strict compliance and

compliance and that the extraneous term "strict" may wrongly imply a heightened duty that could be unclear to licensees. The term "Consumer Loan Commissioner" in (13) is being replaced by the term "department," which is defined in 32-5-102(3), MCA, and used consistently throughout the Montana Consumer Loan Act. The requirement in (13)(c) for reporting information concerning borrower eligibility criteria for credit life or credit disability insurance is being amended to make the provision more general in scope. Subsection (13)(d) is being amended to be consistent with 33-21-206(2), MCA. The citation to 32-5-308, MCA, is being removed as authority for this rule and replaced by 32-5-401, MCA. Section 32-5-401, MCA, grants the department general rulemaking authority and it alone provides the authority for this rule. Section 32-5-401, MCA, is not being implemented by the rule. Accordingly, it is being removed from the implementation citations for the rule. Sections 32-5-306, 32-5-307, and 32-5-308, MCA, are being added to the implementation citations because each is implemented by the rule.

2.59.304 FEES PAID TO PUBLIC OFFICIALS (1) A licensee ~~Licensees~~ who ~~collect fees of any kind~~ collects a fee to be paid to a public official for filing or recording any instrument used to secure a loan; shall file or record the security instrument. A licensee who has filed or recorded a security instrument shall assume responsibility for releasing such release the security instrument from the public record within ten business days after ~~when~~ the obligation has been satisfied whether or not a fee was collected for the filing or recording of the security instrument in the first instance or for the filing or recording of the release.

(2) Licensees shall record on the borrower's ledger card or electronic payment record each amount collected as a fee for recording, filing, or releasing any instrument executed by a borrower to secure a loan. The electronic record must be capable of being reproduced in or converted to hard copy form.

(3) Licensees ~~shall~~ may not collect charge a fee to notarize ~~any notary fee required in connection with~~ any instrument tendered by a borrower as security for any the consumer loan. The prohibition does not affect the authority of a licensee to finance the fee charged by a third party for notary services under 32-5-301(2), MCA.

AUTH: 32-5-401, MCA

IMP: ~~32-5-401~~ 32-5-301, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed amendment sets what the department believes is a reasonable time period within which a licensee shall release a security interest of record after the obligation is satisfied and clarifies that the responsibility to do so is not dependent upon whether the borrower was charged a fee for the filing or recording of a security instrument or for the release of the security instrument. Ten business days was chosen because any longer period would be unreasonable if the borrower were attempting to sell the collateral free of all encumbrances, or to use the collateral as security for another loan, or in other pressing circumstances. The amendment places the burden on the licensee to act promptly to release a security instrument and removes the potential burden on the borrower to cause the licensee to act. The department occasionally receives calls from frustrated borrowers attempting to locate former licensees to

obtain lien releases years after the subject loans were paid in full. Section (3) is being amended to distinguish between notary fees that third parties may charge and that may be financed by consumer loan licensees and notary fees that a licensee may not charge. In the department's experience that distinction has not always been clear to licensees. The implementation citation 32-5-401, MCA, is being replaced by 32-5-301, MCA, because the rule implements 32-5-301, MCA, rather than 32-5-401, MCA. Section 32-5-401, MCA, is the statute that gives the department its general rulemaking authority and it is properly cited as the authority for this rule.

2.59.305 RECEIPT FORM (1) Licensees shall give to the borrower or mail to ~~him at his address of record~~ the borrower's address a plain and complete receipt for each payment made.

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

(c) amount and date of ~~installment~~ payment;

(d) ~~penalty collection~~ past-due amount collected, if any;

(e) and (f) remain the same.

(3) Licensees shall indelibly record on the borrower's loan card, or electronically maintain, as separate items the amount of each installment payment, refund, or collection. An electronic record must be capable of being reproduced in or converted to hard copy form.

AUTH: 32-5-401, MCA

IMP: ~~32-5-401~~ 32-5-304, 32-5-307, MCA

STATEMENT OF REASONABLE NECESSITY: The amendment of (1) is needed to make the rule gender neutral. The amendment of (2)(c) is needed for clarity purposes because not all payments collected will be regular installment payments. Some payments might be deferral fees or past-due fees authorized under 32-5-301(3) and (4), MCA, respectively, or NSF fees authorized under 32-5-407, MCA. Subsection (2)(d) is being amended to use the same terminology that is used in statute. The fee authorized for a past-due amount is not referred to as a penalty in 32-5-301(4), MCA. The amendment of (3) is needed to clarify the section generally and to clarify that electronic records are acceptable alternatives to paper loan cards which consumer lenders rarely use any longer because technology provides more efficient means of recordkeeping. Section 32-5-401, MCA, is being removed from the implementation citations because the rule does not implement 32-5-401, MCA. The rule implements 32-5-304, MCA, and 32-5-307, MCA, both of which are being added to the implementation citations for the rule.

2.59.306 RECORDS OF LICENSEE (1) Each licensee shall continuously maintain a record of the current total of Montana consumer loan notes receivable that were originated at or from each of the licensee's licensed business locations. The original source documents supporting the total must be available for examination by the department at that licensed business location or submitted to the department at the department's direction. On and after January 1, 1960, each licensee shall establish and maintain in current condition a general ledger, located in the place of business maintained in this state for contracting consumer loans.

~~(2) Each general ledger shall contain as a minimum the following accounts appropriate to the licensed organization:~~

Assets	Liabilities and Capital
cash on hand	capital
cash in bank	surplus
notes receivable	net worth
real estate	notes payable
furniture and fixtures	due parent company
expenses	income
other assets	other liabilities

~~(3) Please bear in mind that the foregoing list is intended as a minimum guide only. Any reasonable change in title or additional breakdown of information will be satisfactory.~~

~~(4) The general ledger of each licensee shall be sufficiently complete to show all assets, liabilities, income and expense. Every ledger entry shall be supported by original source documents, which must be available for examination.~~

AUTH: 32-5-401, MCA

IMP: ~~32-5-401~~, 32-5-307, 32-5-403, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being amended because a general ledger of the type described in the rule is no longer needed by the department to perform its duties. The department only needs each licensed location at which Montana consumer loans are originated to maintain a total of Montana notes receivable that can be reconciled with the supporting loan files to ensure that all Montana loans have been disclosed to the department. Sections 32-5-307, MCA, and 32-5-403, MCA, are being added to the implementation citations for this rule because the rule implements those statutes. The rule does not implement 32-5-401, MCA, and so that citation is being deleted from the implementation citations for the rule. Section 32-5-401, MCA, gives the department general rule making authority and is properly included only as the citation of authority for the rule.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to 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., January 29, 2014.

6. Lorraine Schneider, Department of Administration, has been designated to preside over and conduct this hearing.

7. 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 which includes the name and mailing address or 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.

8. 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.

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 this new rule and the proposed rule amendments 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 December 16, 2013.

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

In the matter of the amendment of ARM	)	NOTICE OF PROPOSED
2.63.201, 2.63.203, 2.63.407, 2.63.607,	)	AMENDMENT AND REPEAL
and 2.63.1201 and the repeal of ARM)	
2.63.601, 2.63.602, 2.63.603, 2.63.608,	)	NO PUBLIC HEARING
2.63.613, and 2.63.1001 pertaining to	)	CONTEMPLATED
procedural rules, definitions, retailer)	
commissions, business changes,)	
prizes, license requirements and)	
endorsements, and sale of scratch)	
tickets)	

TO: All Concerned Persons

1. On February 15, 2014, the State Lottery Commission proposes to amend and repeal the above-stated rules.

2. The State Lottery Commission will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the State Lottery Commission no later than 5:00 p.m. on February 6, 2014, to advise us of the nature of the accommodation that you need. Please contact Denise Blankenship, State Lottery, 2525 North Montana Avenue, P.O. Box 200544, Helena, Montana 59601; telephone (406) 444-5801; fax (406) 444-5830; TDD/Montana Relay Service (406) 444-9642; or by e-mail at dblankenship@mt.gov.

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

2.63.201 PROCEDURAL RULES (1) The commission adopts and incorporates by reference ~~rules 1 through 28 of the Attorney General's Model Procedural Rules found in ARM 1.3.102 through 1.3.210, except for the Attorney General's sample rule notice forms.~~ A copy of these rules may be obtained by contacting the Attorney General's Office, Justice Building, 215 North Sanders, P.O. Box 201401, Helena, MT ~~59620-1401~~, telephone (406) 444-2026. the following model rules, which may be found at <http://sos.mt.gov/>:

(a) the Attorney General's model procedural rules ARM 1.3.201, 1.3.202, 1.3.211 through 1.3.224, and 1.3.226 through 1.3.233, including the appendix of sample forms in effect [effective date of amendment]. These rules provide model rules of practice for contested case hearings and declaratory rulings; and

(b) the Secretary of State's model rules ARM 1.3.101, 1.3.102, 1.3.301, 1.3.302, 1.3.304, 1.3.305, 1.3.307 through 1.3.309, and 1.3.311 through 1.3.313 in effect [effective date of amendment]. These rules define model requirements for rulemaking under the Montana Administrative Procedure Act.

AUTH: 2-4-201, 23-7-202, MCA

IMP: 2-4-201, ~~23-7-101~~, ~~23-7-102~~, ~~23-7-103~~, ~~23-7-110~~, MCA

STATEMENT OF REASONABLE NECESSITY: The commission is proposing to amend the above-stated rule to reflect recent updates to the Attorney General's and Secretary of State's Model Rules so that the current model rules are reflected in the rule. As an alternative, the commission could have crafted its own updates to the model rules. However, since the commission already follows the model rules, the commission believes it makes sense to adopt the Attorney General's and Secretary of State's updates. The commission proposes to add 2-4-201, MCA, to the citation of authority because it is this section that requires agencies to adopt rules describing agency organization and procedures. The commission proposes deleting 23-7-101, 23-7-102, 23-7-103, and 23-7-110, MCA, from the listed implemented citations because these citations do not apply to the commission's organization and procedural rules.

2.63.203 DEFINITIONS (1) through (3) remain the same.

~~(4) "Endorsement" means the seal attached to the license which authorizes a retailer to sell lottery on-line tickets at a fixed place of business.~~

(5) through (9) remain the same, but are renumbered (4) through (8).

~~(10) "Terminal issued ticket" means a lottery ticket printed by a terminal connected to a computer.~~

~~(11)(9) "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.~~

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Changes in the market place and procedures adopted for the sale of lottery products have changed since the original draft of the rule. These rules were adopted when scratch tickets were the predominant tickets that retailers sold. Now, retailers sell a variety of tickets beyond scratch tickets. Specifically, an endorsement applied to "scratch only" retailers. Since such retailers no longer exist, the lottery does not require an endorsement. The commission proposes deleting the definition of "terminal issued ticket" because retailers no longer just sell terminal-issued tickets. Finally, the commission proposes amending the definition of "ticket" to reflect that retailers now sell more than just scratch tickets. In sum, keeping the current definitions would inaccurately portray how retailers sell lottery tickets to the public.

2.63.407 RETAILER COMMISSION (1) Each retailer is entitled to a base commission of a minimum of 5 percent of the face value of scratch tickets activated and not returned. Retailers who sell terminal issued tickets are entitled to a 5 percent commission of the face value of ~~terminal issued~~ tickets printed. However, to

further the sale of lottery products, the lottery commission may adopt rules providing additional commissions to sales agents based on incremental sales.

(a) through (e) remain the same.

AUTH: 23-7-202, 23-7-301, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The commission proposes clarifying that retailers will receive a minimum of 5 percent commission. This change will give the retailers assurance that they will receive 5 percent commission, but will also give the lottery additional flexibility in developing programs to promote sales of lottery tickets. Section 23-7-301(10), MCA, provides that sales agents are entitled to a commission of no more than 10 percent of the face value of tickets. The commission believes that flexibility is needed in determining the commission amount. For example, to promote the sale of higher-priced tickets, it may be appropriate to pay a higher commission for these tickets than lower-priced tickets. In some cases, it may also be appropriate to pay a 10 percent commission for the sale of high-value tickets.

2.63.607 BUSINESS CHANGES (1) A licensee ~~must~~ shall notify the director of any of the following changes in the licensed business:

- (a) any change of business structure;
- (b) material change of ownership;
- (c) voluntary or involuntary business closure;
- (d) changes in the officers;
- (e) changes in the board of directors; ~~and~~
- (f) change of business address; and
- (g) change, move, or removal of lottery terminal, equipment, and/or peripherals.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: The purpose of this proposed change is to alert the lottery to the specified changes so that the lottery may help the retailer avoid problems down the road.

History has shown that misplacement of lottery equipment can have a significant negative effect on a retailer's sales. Moving a terminal from a visible location to a location with minimal access for customers will decrease sales and commissions for lottery retailers. Also, removal, moving, and reinstallation of equipment by someone other than a qualified system vendor may cause damage and significant delays to the retailer's sales. The proposed change from "must" to "shall" is consistent with legislative drafting convention.

2.63.1201 PRIZES (1) through (4) remain the same.

(5) The lottery may deny a claim for a winning scratch or terminal issued ticket if the ticket:

(a) ~~the ticket~~ was not legally issued;
(b) ~~the ticket~~ was stolen;
(c) ~~the ticket~~ is altered or forged or so mutilated that its authenticity cannot reasonably be determined.

(6) through (13) remain the same.

(14) The owner(s) or employees of licensed lottery retailers shall identify themselves as such to lottery officials when claiming a prize. This information must be recorded on the claim form presented to the lottery either by mail or in person.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-211, MCA

STATEMENT OF REASONABLE NECESSITY: The proposed addition of (14) will satisfy the 2012 Montana Lottery Security Audit finding and provide justification for requesting employment information from a claimant. The finding requires retailer owners and employees to identify themselves as such when making a claim as an added security measure. This is currently done in other states, and the auditors thought it was appropriate for the Montana lottery to do the same. The commission agrees with the auditors' recommendation. The proposed changes to (5) simplify the rule.

4. The commission proposes to repeal the following rules:

2.63.601 LICENSE APPLICATION FEE, found on ARM page 2-6525.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of this rule because it adds nothing substantive to the statutory language.

2.63.602 PROVISIONAL LICENSE, found on ARM page 2-6525.

AUTH: 23-7-202, 23-7-211, MCA

IMP: 23-7-211, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of this rule because it adds nothing substantive to the statutory language.

2.63.603 DISPLAY OF LICENSE, found on ARM page 2-6525.

AUTH: 23-7-301, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of this rule because it adds nothing substantive to the statutory language.

2.63.608 ASSIGNMENT OR TRANSFER OF LICENSE PROHIBITED, found on ARM page 2-6526.

AUTH: 23-7-202, MCA

IMP: 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: Section 2-4-305(2), MCA, states that rules may not unnecessarily repeat statutory language. The commission proposes deletion of this rule because it adds nothing substantive to the statutory language.

2.63.613 ENDORSEMENT, found on ARM page 2-6528.

AUTH: 23-7-202, MCA

IMP: 23-7-202, 23-7-301, MCA

STATEMENT OF REASONABLE NECESSITY: As noted, the endorsement requirement applied when retailers sold only scratch tickets. The commission no longer requires an endorsement because "scratch only" retailers no longer exist.

2.63.1001 SALE OF SCRATCH TICKETS, found on ARM page 2-6541.

AUTH: 23-7-202, MCA

IMP: 23-7-202, MCA

STATEMENT OF REASONABLE NECESSITY: This rule applied when the lottery had "scratch only" retailers. As explained, this is no longer the case.

5. Concerned persons may present their data, views, or arguments concerning the proposed actions to John Tarr, Security Director for the Montana Lottery at 2525 North Montana Avenue, Helena, Montana 59601; telephone (406) 444-5804; fax (406) 444-5830; or by e-mail to JTarr@mt.gov, and must be received no later than 5:00 p.m. on February 13, 2014.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to John Tarr, Security Director of the Montana Lottery at the above address no later than 5:00 p.m., on February 13, 2014.

7. If the commission receives requests for a public hearing on the proposed actions from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed actions; 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 80 persons based on the number of lottery retailers in the state.

8. The State Lottery Commission 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 commission.

9. 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.

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

11. With regard to the requirements of 2-4-111, MCA, the commission has determined that the proposed rule amendments and repeals will not significantly and directly impact small businesses.

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 December 16, 2013.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PROPOSED
17.24.905 pertaining to rules not)	AMENDMENT
applicable to in situ coal operations)	
)	(RECLAMATION)
)	
)	NO PUBLIC HEARING
)	CONTEMPLATED

TO: All Concerned Persons

1. On February 3, 2014, the Board of Environmental Review proposes to amend the above-stated rule.

2. The 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 Elois Johnson, Paralegal, no later than 5:00 p.m., January 15, 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 rule proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

17.24.905 RULES NOT APPLICABLE TO IN SITU COAL OPERATIONS

- (1) The following rules are not applicable to in situ coal gasification:
 - (a) remains the same.
 - (b) ~~ARM 17.24.320 (Plans for Disposal of Excess Spoil);~~
 - (c) and (d) remain the same, but are renumbered (b) and (c).
- (2) remains the same.

AUTH: 82-4-207, MCA

IMP: 82-4-221, 82-4-222, 82-4-223, 82-4-225, 82-4-227, 82-4-228, 82-4-231, 82-4-232, 82-4-233, 82-4-237, 82-4-238, 82-4-240, 82-4-243, MCA

REASON: It is necessary to amend this rule because the Office of Surface Mining has determined that, by eliminating the plans for disposal of excess spoil, our rule would be less stringent than the federal counterpart. In order for the department to continue to regulate coal mining, its rules must be as stringent as the Surface Mining Control and Reclamation Act and implement federal statute 30 U.S.C. 1253.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to 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, no later than January 23, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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 they have to 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, no later than January 23, 2014.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 1 based on the fewer than 20 regulated mines in Montana.

7. 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.

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

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

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, December 16, 2013.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I pertaining to administrative	)	ADOPTION
requirements for limited opencut)	
operations	)	(RECLAMATION)
)	
	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On February 3, 2014, the Board of Environmental Review proposes to adopt the above-stated rule.

2. The 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 Elois Johnson, Paralegal, no later than 5:00 p.m., January 15, 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 proposed new rule provides as follows:

NEW RULE I ADMINISTRATIVE REQUIREMENTS FOR LIMITED OPENCUT OPERATIONS (1) An operator holding an opencut permit may conduct a limited opencut operation that meets the criteria in 82-4-431(2), MCA, without first obtaining an additional permit or an amendment to an existing permit when, prior to commencing the limited opencut operation, the operator completes and submits to the department appropriate site and opencut operation information on a limited opencut operation form provided by the department.

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

- (a) the operator's complete name and address;
- (b) the location, in the format required by the department, of the limited opencut operation site;
- (c) the locational coordinates of the approximate center of the limited opencut operation site;
- (d) the location, in a format acceptable to the department, of the operator's nearest limited opencut operation to the proposed limited opencut operation site;
- (e) plans to expand or continue the limited opencut operation in accordance with 82-4-431(4), MCA;
- (f) the landowner's name and address;
- (g) driving directions to access the site from the nearest public road;

(h) a description of the pre-mine condition of the limited opencut operation site and the pre-mine condition of any private access roads to the limited opencut operation site;

(i) an aerial or topographic map of the limited opencut operation site; and

(j) certification by the operator that the information provided to the department in the limited opencut operation form is complete and accurate.

(3) The department's receipt of a limited opencut operation form initiates the timeframes set forth in 82-4-431, MCA, for either:

(a) salvaging soil, removing materials, and reclaiming the limited opencut operation site; or

(b) applying for a permit to continue or expand the opencut operation.

(4) A person conducting a limited opencut operation, authorized under 82-4-431(2), MCA, may not remove more than 10,000 cubic yards of materials and overburden. This limitation does not include the volume of soil and overburden that is stripped and stockpiled on the limited opencut operation site for site reclamation.

AUTH: 82-4-422, MCA

IMP: 82-4-431, MCA

REASON: Proposed New Rule I provides administrative requirements that are necessary to implement the provisions in Section 5 of Senate Bill 332 (Chapter 198, Laws of 2013, codified in 82-4-431(2), MCA) for limited opencut operations. An operator who holds a permit under 82-4-431, MCA, may conduct a limited opencut operation without obtaining an additional permit or an amendment to an existing permit if the limited opencut operation meets the criteria in 82-4-431(2), MCA. To meet the criteria in 82-4-431(2), MCA, for a limited opencut operation, the operator must submit appropriate site and operation information on a form provided by the department. Proposed New Rule I is necessary to set forth administrative procedures for submitting appropriate limited opencut operation site and operation information to the department in accordance with Section 5 of Senate Bill 332. Proposed New Rule I will provide necessary clarification of the time limits for site reclamation and for submittal of an application to continue or expand a limited opencut operation pursuant to 82-4-431(4), MCA, as adopted in Section 5 of Senate Bill 332. Finally, New Rule I provides that the 10,000-cubic-yard limitation for a limited opencut operation does not include the volume of soil and overburden that is stripped and stockpiled on the limited opencut operation site for reclamation purposes. This clarification is necessary to uphold the intent of Senate Bill 332, which is to allow operators a way to avoid the full permit process when necessary to complete smaller, short-term projects.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to 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, no later than January 23, 2014. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

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 they have to 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, no later than January 23, 2014.

6. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 55 based on the 550 operators holding permits in Montana.

7. 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.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by letter dated July 29, 2013.

9. 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.

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, December 16, 2013.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING
ARM 23.12.1203 through 23.12.1208,) ON PROPOSED AMENDMENT
23.12.1301, and 23.12.1411 through)
23.12.1413 pertaining to Montana Law)
Enforcement Academy Preservice)
Applicants)

TO: All Concerned Persons

1. On January 15, 2014, at 10:00 a.m., the Montana Department of Justice will hold a public hearing in the auditorium of the Scott Hart Building, 303 North Roberts, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on January 2, 2014, to advise us of the nature of the accommodation that you need. Please contact Jaime Burkhalter, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail jburkhalter@mt.gov.

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

23.12.1203 BASIC COURSE ATTENDANCE REQUIREMENTS FOR PRESERVICE APPLICANTS (1) Preservice applicants are persons not employed as full-time or part-time ~~public safety~~ peace officers. Preservice applicants shall be selected to attend the ~~MLEA basic course~~ Montana Law Enforcement Academy Law Enforcement Officer Basic Course based on their ability to meet minimum qualifications. This includes successfully completing the pretest screening of their application, written and physical ability test, oral interview, background investigation, and criminal history, investigation. ~~and test screening.~~ Successful applicants will be ranked in accordance with ARM 23.12.1207. Scheduled attendance by the successful applicants to the ~~basic course~~ Law Enforcement Officer Basic Course will be by order of rank from the applicant list and by course availability. Preservice applicants scheduled to attend the ~~basic course~~ Law Enforcement Officer Basic Course shall receive reporting instructions and other information from the academy administrator or the academy administrator's designee.

AUTH: 44-10-202, MCA
IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify the application and selection process for preservice applicants to the Montana Law Enforcement Academy (MLEA) basic course for law enforcement officers. This amendment removes the reference to public safety officers because the preservice programs only apply to law enforcement peace officers; there are no preservice programs that apply to public safety officers.

23.12.1204 MINIMUM QUALIFICATIONS FOR PRESERVICE TESTING AND PRETEST SCREENING (1) and (1)(a) remain the same.

(b) applicants must possess a valid ~~drivers~~ driver's license issued by any state.

(2) and (3) remain the same.

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to make a minor grammatical change to promote consistency throughout the rules. No substantive changes are intended by this amendment.

23.12.1205 PRESERVICE TESTING PROCEDURES (1) The preservice applicant tests shall be administered by the academy and/or an approved designee, and shall be conducted whenever it is deemed necessary by the academy administrator or the academy administrator's designee. Applicants shall be notified of the test date, time, and location at least thirty days in advance of the test.

(2) The preservice applicant tests shall consist of a written examination that measures general aptitudes, reading, and writing skills. ~~A copy of the test used will be filed annually with POST.~~

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to remove the provision requiring the MLEA to file copies of tests with the Public Safety Officer Standards and Training Council (POST). POST has no oversight responsibilities regarding MLEA admission requirements and preservice applicants, and thus, there is no need for MLEA to file copies with POST. Additionally, removing this provision reduces potential concerns regarding the permitted use of testing materials, given that some testing instruments and materials are administered and copyrighted by third parties.

23.12.1206 PRESERVICE TEST SCREENING PROCEDURES

(1) Preservice test screening shall be conducted for those applicants who have successfully completed the testing procedures, who have been ranked according to the ranking procedures, and in accordance with the space available in the ~~basic courses~~ Law Enforcement Officer Basic Courses to be presented by the

academy in the year following the test date. The availability of space shall be determined by the academy administrator or the academy administrator's designee.

(2) All preservice applicants shall be required to provide two sets of classifiable fingerprints ~~and a photograph of not less than 1 1/2 inches by 1 1/2 inches of the applicant's full face, head and shoulders at the time an application is submitted.~~

(3) The academy administrator or the academy administrator's designee shall conduct criminal history, prior employment, and character and background checks on each applicant selected for further consideration after testing has occurred.

(a) A criminal history investigation may occur before granting an interview to a preservice applicant.

(4) An oral interview board shall be created consisting of the academy administrator or the academy administrator's designee, a representative of a county sheriff's office, a representative of a municipal police department, and a member of the general public.

(a) An alternate representative of a county sheriff's office, representative of a municipal police department, and a member of the general public will also be appointed to serve whenever a representative person is unable to attend an interview. All appointments to the board shall be made by the academy administrator or the academy administrator's designee.

(5) The oral interview board shall interview all preservice applicants who successfully pass the background checks. Applicants who fail the interview will not be considered for admission to any ~~basic course~~ Law Enforcement Officer Basic Course scheduled for the year following this process.

(6) Total possible points for applicants who pass the oral interview will be ~~fifty-five~~ 55 points. Applicants who pass will be granted from 1-55 points based upon their interview performance.

(7) remains the same.

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify the application and selection process for preservice applicants to the MLEA basic course for law enforcement officers. This amendment removes the requirement that applicants provide a photograph. The department believes the photograph requirement is an unnecessary burden on applicants at this early stage in the process. This amendment also clarifies that a criminal history investigation may occur before an interview is granted. In the past, criminal history investigations sometimes occurred after an interview, and candidates who had completed a significant portion of the application process were excluded based on criminal histories. This practice led to wasted time and resources, both for the applicants and the department. This amendment addresses those concerns.

23.12.1207 RANKING OF PRESERVICE APPLICANTS FOR ELIGIBILITY TO ATTEND THE BASIC COURSE (1) through (2)(g) remain the same.

(h) an additional 15 points will be added for a ~~masters~~ master's degree;

(i) through (5) remain the same.

(6) This ranking is meant only to qualify the applicants for attending the ~~MLEA basic course~~ Montana Law Enforcement Academy Law Enforcement Officer Basic Course and is not meant to qualify these individuals for employment as peace officers or ~~public safety officers~~.

AUTH: 44-10-202, MCA

IMP: 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to make minor grammatical changes to promote consistency throughout the rules. This amendment also removes the reference to public safety officers because the preservice programs only apply to law enforcement peace officers; there are no preservice programs that apply to public safety officers. This amendment removes any confusion about the applicants subject to these rules.

23.12.1208 PROCEDURES FOR REGISTRATION, ATTENDANCE, AND FEES FOR PRESERVICE APPLICANTS (1) In order of rank, preservice applicants will be given an opportunity to register for those ~~basic course~~ Law Enforcement Officer Basic Course sessions that are scheduled by the academy. Applicants shall be considered eligible to attend any ~~basic course~~ Law Enforcement Officer Basic Course session scheduled to commence within one year from the date of their ranking.

(2) Once the scheduled preservice roster is full for a particular ~~basic course~~ Law Enforcement Officer Basic Course session, applicants will be placed on a waiting list by order of rank.

(3) Registered applicants who decline to participate in a ~~basic course~~ Law Enforcement Officer Basic Course session may be required to retest, but may be allowed to reregister for another session at the discretion of the academy administrator or the academy administrator's designee.

(4) At least 30 days before a ~~basic course~~ Law Enforcement Officer Basic Course session is scheduled to begin, registered applicants will be required to complete and pass a medical examination which will be conducted by a ~~physician appointed by the academy~~ health care professional selected and paid for by the applicant.

(5) At least 30 days before a ~~basic course~~ Law Enforcement Officer Basic Course session is scheduled to begin, registered applicants will be required to provide proof of medical insurance coverage for the period of the basic course. Other final documentation required by the academy must also be provided at least 30 days in advance.

(6) ~~A \$2,000 tuition fee, together with payment for meals, room, necessary uniforms, equipment, and supplies, will be required from each preservice applicant to be paid in full by the first day of the basic course session to be attended. Proof of tuition subsidies, grants, or scholarships will be accepted in lieu of cash payment.~~ Cost for participation in the Law Enforcement Officer Basic Course Preservice Program is \$5,100 for in-state residents and \$7,100 for out-of-state residents. These fees include room and board, instructional costs, training and

education materials, and equipment and supplies. A \$300 nonrefundable deposit, which is deducted from the total cost of participation, must be paid within ten days of acceptance into the Preservice Program.

(a) For purposes of the Montana Law Enforcement Academy Preservice Program, a person is considered a Montana resident if they have resided in the state for 180 consecutive days. Applicants may be required to provide sufficient documentation to prove residency.

(7) Preservice students who leave a ~~basic course~~ Law Enforcement Officer Basic Course voluntarily or who are dismissed will be granted a tuition refund on the following basis:

(a) through (c) remain the same.

(8) At least 30 days before the starting date of a ~~basic course~~ Law Enforcement Officer Basic Course session, registered applicants will receive a packet of information that includes reporting information and the name and address of the course manager for the particular basic course session.

(9) remains the same.

AUTH: 44-10-202, MCA

IMP: 44-10-202, 44-10-301, MCA

RATIONALE AND JUSTIFICATION: This amendment removes the requirement that applicants obtain a medical examination from a MLEA-appointed physician. The department recognizes many communities have limited access to physicians and this requirement may impose a significant burden on some applicants. Further, the requirement that the physician be MLEA-approved imposes an additional, unnecessary burden on applicants, as well as the MLEA. This amendment is reasonably necessary to address these concerns and to allow applicants to obtain medical examinations from other health care professionals, such as physician's assistants.

This amendment is also reasonably necessary to address the rising costs involved in conducting a preservice program. Over the past five years, the MLEA has experienced increasing inflationary costs associated with the preservice program that warrant the tuition increase. Additionally, MLEA has seen an increase in out-of-state applicants who, upon completion of the program, will not be serving as law enforcement officers within Montana. Differentiating the costs between in-state and out-of-state applicants helps to ensure that the MLEA is able to provide a quality training program while complying with the legislative intent that the costs of training for "qualified individuals" other than law enforcement be borne by the other qualified individuals and not the state of Montana. Additionally, the differentiation in tuition and fees for in-state and out-of-state students is intended to provide an incentive to and prevent displacement of in-state students.

Based upon analysis of the past three years, the funding increase would amount to an additional \$1,000 in tuition and fees for in-state students and an additional \$3,000 in tuition and fees for out-of-state students. The cumulative effect per year would be approximately \$3,000 - \$4,000 increase in tuition and fees for in-state students.

Though the MLEA has received numerous out-of-state applications from prospective students, no out-of-state students have attended the MLEA in the last three years. Based on the numbers of preservice students over the last three years, the total number of students affected is anticipated to be 4 to 5 annually (Preservice students for last three years: 2011 = 2; 2012 = 5; 2013 = 4).

23.12.1301 RULES OF CONDUCT FOR STUDENTS ATTENDING BASIC PROGRAMS UPON THE MONTANA LAW ENFORCEMENT ACADEMY CAMPUS

(1) Students must agree in writing to accept and act in accordance with the rules as stated in the Montana Law Enforcement Academy student agreement governing their conduct and behavior while attending basic-bureau programs upon the Montana Law Enforcement Academy campus.

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

(3) The student agreement may also specify other rules and regulations that the academy administrator or the academy administrator's designee may deem as proper and necessary in order to manage the campus and courses in a safe and orderly manner.

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify that the rules of conduct apply to all persons attending courses upon the MLEA campus.

23.12.1411 STUDENT ACADEMIC PERFORMANCE REQUIREMENTS FOR THE BASIC COURSE MONTANA LAW ENFORCEMENT ACADEMY COURSES (1) remains the same.

(2) ~~The total accumulative points possible for each basic course shall be filed with the POST advisory council in conjunction with the annual review of the curriculums as prescribed in ARM 23.13.304. A student must meet a 90 percent attendance rating of not only the overall course but of each unit of instruction. In the Law Enforcement Officer Basic Course this includes law and criminal procedure, human behavior and social interaction, patrol operations, investigations, health and wellness, traffic enforcement, and survival skills.~~

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This rule is reasonably necessary to include an attendance requirement to ensure students will attend the majority of the overall course as well as the individual units of instruction. This amendment is also reasonably necessary to remove the language requiring the MLEA to file with POST. POST has no oversight responsibilities regarding MLEA admission requirements and preservice applicants, and thus, there is no need for MLEA to file the points for each basic course with POST.

23.12.1412 OTHER STUDENT PERFORMANCE MEASURES (1) through (1)(c) remain the same.

(2) Performance evaluations will be conducted on a regular basis by the academy administrator or ~~their~~ the academy administrator's designee. Performance evaluations will be summarized orally and in writing and based upon ~~the following behavioral categories that objectively reflect students' participation in Montana Law Enforcement Academy courses.~~ This may include but is not limited to the following areas:

- ~~(a) work habits;~~
- (b) remains the same, but is renumbered (a).
- ~~(c) (b) interpersonal skills; and~~
- ~~(d) motivation;~~
- ~~(e) (c) effectiveness under stress; and~~
- ~~(f) overall rating of personal qualities.~~

(3) The evaluation will consist of ~~four~~ various levels of performance including but not limited to:

(a) through (4) remain the same.

(a) a total of three "needs to improve" evaluations in any one specific category or a total of any two "not acceptable" evaluations will result in a corrective action plan, or could result in immediate dismissal from the ~~basic course~~ Law Enforcement Officer Basic Course by the academy administrator or the academy administrator's designee.

(5) A copy of the performance evaluation criteria and a written summary of a student's performance evaluation will be provided to the student and to the student's agency administrator ~~when applicable, and to any potential employer who inquires.~~ ~~A copy will be kept on file in the student's record maintained by the academy administrator.~~

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This amendment is reasonably necessary to clarify the MLEA's role in evaluating student performance measures. The department believes students should be evaluated on an objective basis, rather than a subjective basis. Based on past experience, the factors that are being deleted from this rule required a subjective evaluation, rather than an objective evaluation. These changes are intended to provide more flexibility in creating and conducting meaningful and accurate performance evaluations.

23.12.1413 MLEA MONTANA LAW ENFORCEMENT ACADEMY FIREARMS PERFORMANCE REQUIREMENTS FOR THE LAW ENFORCEMENT OFFICER BASIC COURSE (1) A student must achieve a passing score in the MLEA Montana Law Enforcement Academy firearms training course.

(2) The total accumulative points possible for the firearms training course shall be determined by the academy administrator or the academy administrator's designee. ~~filed with the POST advisory council in conjunction with the annual review of the curriculums as prescribed in ARM 23.14.416(3).~~

AUTH: 44-10-202, MCA

IMP: 44-10-202, MCA

RATIONALE AND JUSTIFICATION: This rule is reasonably necessary to remove the language requiring the MLEA to file with POST. POST has no oversight responsibilities regarding MLEA admission requirements and preservice applicants, and thus, there is no need for MLEA to file the points for the firearms training course with POST.

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: Matt Cochenour, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail mcochenour2@mt.gov, and must be received no later than 5:00 p.m., on January 23, 2014.

5. Matt Cochenour, Department of Justice, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the department's web site at <https://doj.mt.gov/agooffice/administrative-rules>. 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 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 works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/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 December 16, 2013.

DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On January 16, 2014, at 1:00 p.m., a public hearing will be held in the first floor conference room, Room 104, of the Walt Sullivan Building, 1315 E. Lockey Avenue, Helena, Montana, to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on January 9, 2014, to advise us of the nature of the accommodation needed. Please contact the Employment Relations Division, Department of Labor and Industry, Attn: Peter Van Nice, P. O. Box 8011, Helena, Montana 59604-8011; telephone (406) 444-0566; Montana Relay 1 (800) 253-4091; TDD (406) 444-5549; fax (406) 444-7710; or email to PVanNice@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The Montana Professional Employer Organizations and Groups Licensing Act (Act) was initially enacted by Senate Bill 264 in 1995. Amendments to the Act were passed in both 2005 (Senate Bill 373), and in 2007 (House Bill 72). In the years since these bills were enacted, the department has received questions and inquiries regarding the PEO licensure process and requirements as outlined in the statutes. The department notes that the only time the PEO application process gets bogged down is when applicants do not understand the process or necessary forms, and fail to follow instructions. These rules are a culmination of department effort and input from stakeholders since the Act was enacted in 1995.

Accordingly, the department determined it is reasonably necessary to propose these new rules now to clarify the application process for new and renewal applicants and to increase compliance with the Act as amended in 2005 and 2007. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule.

4. The proposed new rules provide as follows:

NEW RULE I NEW APPLICATIONS - DENIALS (1) To be eligible to receive a license, a professional employer organization or group (PEO) must submit all application materials required by 39-8-202 and 39-8-207, MCA.

(2) Upon receipt of an incomplete application from a newly applying PEO, the department will inform the applicant in writing that the PEO has 90 days from the date that the original application was received to submit a completed application.

(a) If a complete application is not received within the 90-day deadline, the application will be denied.

(b) An extension of the application process may be requested in writing by a controlling person and will be evaluated on a case-by-case basis.

AUTH: 39-8-201, MCA

IMP: 39-8-202, 39-8-203, 39-8-207, MCA

REASON: It is reasonably necessary to adopt this new rule to clearly delineate the 90-day application process for a new PEO. The department has found the period of time from application date to when the final information is received from the PEO often unreasonably exceeds 90 days. During this time, the PEO may be operating in Montana under a provisional license and often without a sense of urgency in getting final approval. The department concluded that defining a set 90-day period will provide more control over the process and the documentation submitted by the PEO applicant.

NEW RULE II RENEWAL APPLICATIONS - DENIALS (1) The department will send a renewal application approximately 90 days prior to the renewal date. A completed renewal application must be received by the department 30 days prior to the expiration date of the license.

(a) If a completed renewal application is not received 30 days prior to the expiration date, the existing license will automatically expire and a subsequently received renewal application will not be renewed.

(b) Upon the expiration and nonrenewal of a license under (a), the applicant is subject to the provisions of 39-8-206(2)(b), MCA.

(c) Any application materials received under (a) will be treated as a new application and will be subject to the provisions of 39-8-203(7), MCA.

(d) Upon the nonrenewal of a renewal application, the department shall send a letter to all client companies of the PEO notifying the client companies the PEO renewal application has been denied.

AUTH: 39-8-201, MCA

IMP: 39-8-202, 39-8-203, 39-8-204, 39-8-206, MCA

REASON: The department is adopting New Rule II to clarify that under the statutory scheme in Title 39, chapter 8, failure to submit a renewal application 30 days prior to the expiration date requires the department to deny the renewal application. The department believes that licensed PEOs should be able to comply with the renewal application requirements, given that the renewal application will be sent 90 days prior to the due date.

It is reasonably necessary to clarify in (1)(d) the department's duty to ensure a PEO's client companies are notified when the department denies the PEO's renewal application. The court in *MP Livestock Trust/Perry Polzin Trucking v. DLI/UEF*, 2005

MTWCC 6, WCC No. 2004-1109, concluded that the department has a duty to ensure client companies are informed when a license is revoked, suspended, or not renewed, because the department knows that client companies would detrimentally rely on the existence of valid workers' compensation coverage by virtue of a valid PEO license.

NEW RULE III SUSPENSION, REVOCATION, NONRENEWAL - APPEAL - IMMEDIATE CESSATION OF OPERATIONS (1) Upon the suspension or revocation of a regular or provisional license, or upon the denial of a renewal application, the department shall notify all client companies by mail that the PEO's license has been suspended, revoked, or not renewed.

(2) The PEO may appeal the suspension, revocation, or nonrenewal by submitting a written request within 30 days of receiving the notice of suspension, revocation, or denial. The appeal must be submitted to the department's hearings bureau.

(3) When the suspension or revocation of a provisional or regular license is appealed, the department may order an immediate cessation of operations if:

- (a) the PEO does not maintain a valid workers' compensation policy; or
- (b) other circumstances determined by the department warrant immediate cessation of operations.

AUTH: 39-8-201, MCA

IMP: 39-8-203, 39-8-204, 39-8-206, MCA

REASON: It is reasonably necessary to adopt New Rule III and clarify that the department has a duty to ensure a PEO's client companies are notified when the department suspends or revokes a current license, or when it denies a PEO's renewal application. The court in *MP Livestock Trust/Perry Polzin Trucking v. DLI/UEF*, 2005 MTWCC 6, WCC No. 2004-1109, concluded that the department has a duty to ensure the client companies are informed when a license is revoked, suspended, or not renewed, because the department knows that client companies would detrimentally rely on the existence of valid workers' compensation coverage by virtue of a valid PEO license.

The department is clarifying in (3) those circumstances under which the department may order the immediate cessation of a PEO's operations, including when a PEO has no valid workers' compensation policy in place.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Brett Wall, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P. O. Box 8011, Helena, Montana 59624-8011; 0513, by facsimile to (406) 444-3465; or by e-mail to brwall@mt.gov, and must be received no later than 5:00 p.m., January 24, 2014.

6. An electronic copy of this notice of public hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings section. The department strives to make the

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

7. The department 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 Department of Labor and Industry 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 Department of Labor and Industry, attention: Mark Cadwallader, 1315 E. Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or made by completing a request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were contacted as follows: Senator Jeff Essmann (Senate Bill 373), by regular mail on July 28, 2005; and Representative Kendall Van Dyk (House Bill 72), by regular mail on April 5, 2007.

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

Documentation of the department's above-referenced determination(s) is available upon request to Brett Wall, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P. O. Box 8011, Helena, Montana 59624-8011; 0513; telephone (406) 444-0776; facsimile (406) 444-3465; or e-mail to brwall@mt.gov.

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

/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 December 16, 2013.

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 32.3.138, 32.3.139, 32.3.140,	)	AMENDMENT
Deputy Veterinarians; ARM 32.3.224,)	
Domestic Bison	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On January 26, 2014, the Department of Livestock proposes to amend the above-stated rules.

2. The Department of Livestock will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on January 17, 2014, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-4316; e-mail: cmackay@mt.gov.

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

32.3.138 DEPUTY STATE VETERINARIAN DEFINITION (1) "Department" means the Department of Livestock.

(2) "Deputy State Veterinarian" means a veterinarian licensed in the state of Montana and deputized to perform state functions pursuant to ARM 32.3.139 of this subchapter who is not a current employee of ~~does not receive a salary or compensation from~~ the department or USDA the United States Department of Agriculture (USDA).

~~(3) "USDA" means the veterinary services branch of the Animal and Plant Inspection Services, United States Department of Agriculture.~~

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

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

32.3.139 APPOINTMENT AS DEPUTY STATE VETERINARIAN (1) The department is authorized to deputize a veterinarian when it determines that such veterinarian:

(a) is licensed to practice veterinary medicine in Montana ~~without restriction;~~

(b) is a current USDA accredited category I or category II veterinarian pursuant to 9 CFR, Chapter 1, Part 161;

~~(b) (c)~~ (c) has made formal application for deputization upon forms provided by the department;

~~(c) (d)~~ has been recommended by the state veterinarian; and
~~(e)~~ has attended the department deputy state veterinarian training; and
~~(d)~~ has been accredited by USDA pursuant to 9 CFR, Chapter 1, Part 161;
and
~~(e)~~ follows the current Montana Deputy State Veterinarian Policy and Procedures Handbook.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-108, MCA

32.3.140 DUTIES OF DEPUTY STATE VETERINARIAN (1) A deputy state veterinarian shall:

~~(a)~~ be aware of and follow all applicable regulations and instructions as outlined on the Deputy State Veterinarians section of the department's web site;

~~(b)~~ be aware of and follow all applicable regulations and instructions as outlined in 9 CFR;

~~(a)~~ ~~(c)~~ quarantine in writing all animals exposed to a quarantinable disease upon suspicion of diagnosis in the absence of, or on the order of the state veterinarian. Immediate notification of quarantine must be made to the Montana State Veterinarian's office by phone, fax, or mail;

~~(b)~~ ~~(d)~~ report immediately all cases of quarantinable diseases (ARM 32.3.104 and 32.3.105) to the state veterinarian in Helena, by telephone or fax;

~~(c)~~ ~~(e)~~ release quarantine upon the direction of the state veterinarian and ARM 32.3.106 through 32.3.108;

~~(d)~~ ~~(f)~~ be responsible for proper use of all official certificates, forms, records, reports, tags, or other official identification used in the work as a deputy state veterinarian and take proper precautions to prevent misuse thereof;

~~(e)~~ ~~(g)~~ immediately report the loss, theft, deliberate or accidental misuse of any official document or materials as listed above in (1)(d), and must keep these materials in only his/her custody prior to official use;

~~(f)~~ ~~(h)~~ file a monthly form regarding other reportable diseases; and

~~(g)~~ ~~(i)~~ mail weekly, all required inspection forms, test charts, certificates of veterinary inspection, and vaccination certificates made during the week.

AUTH: 81-2-102, 81-2-103, MCA
IMP: 81-2-102, 81-2-108, MCA

REASON: This proposal updates language to reflect the new federal accreditation program and specifically outlines deputy veterinarian duties to include knowledge of and compliance with applicable state and federal regulations. State policies and procedures will now be outlined online for veterinarians to access.

32.3.224 DOMESTIC BISON (1) Domestic bison may enter the state of Montana provided they enter in conformity with ARM 32.3.201 through 32.3.211 and in addition:

(2) Domestic bison must be

~~(a) are~~ officially tested negative for Brucellosis within 30 days prior to entry except the following:

- ~~(i) (a)~~ steers, spayed heifers, and calves under 12 months of age;
- ~~(ii) (b)~~ domestic bison consigned directly to an official slaughtering establishment for immediate slaughter;
- ~~(iii) (c)~~ an official calfhood vaccinate less than 24 months of age (the first pair of permanent incisors has not fully erupted) and which is not parturient, post parturient, or in the last trimester of pregnancy; and
- ~~(iv) (d)~~ domestic bison originating in an official certified Brucellosis free bison herd; and

~~(b) (3)~~ d Domestic bison required to be tested for Brucellosis prior to entry may be quarantined for a 45- to 120-day Brucellosis retest, at owner's expense, after arrival in Montana. Included here will be all female domestic bison from states or areas with Brucellosis classification of A, B, or lower; and

~~(c) (4)~~ f Female domestic bison must be officially calfhood vaccinated by an accredited deputy state veterinarian prior to entry into Montana, with a Brucella abortus vaccine approved by the administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture except the following:

- ~~(i) (a)~~ spayed domestic bison;
- ~~(ii) (b)~~ domestic bison consigned directly to an official slaughtering establishment for immediate slaughter;
- ~~(iii) (c)~~ nonvaccinated domestic bison 4 to 11 months of age placed under quarantine upon arrival, for official calfhood vaccination or spaying by a deputy state veterinarian, within 30 days of their entry; and
- ~~(iv) (d)~~ nonvaccinated domestic bison less than four months of age, imported without their dams, placed under quarantine upon arrival, for official calfhood vaccination or spaying by a deputy state veterinarian, within six months of their entry; and

(5) Test-eligible domestic bison originating from a tuberculosis accredited free U.S. state or zone require a negative tuberculosis test within 60 days prior to importation if they have been in contact or exposed to M-branded, Mx-branded, or other cattle originally from Mexico.

(6) Test-eligible domestic bison originating from a tuberculosis modified accredited advanced U.S. state or zone must meet one of the following requirements:

- (a) one negative tuberculosis test within 60 days prior to importation; or
- (b) one negative tuberculosis test within six months and part of a whole herd test; or
- (c) originate directly from an accredited tuberculosis free herd; or
- (d) less than six months of age and accompanied by a tuberculosis test-negative dam.

(7) Test-eligible domestic bison originating from a tuberculosis modified accredited U.S. state or zone must meet one of the following requirements:

- (a) two negative tuberculosis tests 60-120 days apart, with the second test occurring within 60 days prior to importation into Montana; or
- (b) one negative tuberculosis test within 60 days prior to importation into Montana and part of a whole herd test within the last 12 months; or

(c) one negative tuberculosis test within 60 days prior to importation into Montana and originate directly from an accredited tuberculosis free herd.

(8) Test-eligible domestic bison originating from outside of the United States must have one negative tuberculosis test within 60 days prior to importation. Bison originating directly from Mexico must meet the requirements set forth in ARM 32.3.212B.

(9) Domestic bison less than two months of age originating from a tuberculosis modified accredited U.S. state or zone must be quarantined for testing between two and four months of age.

~~(10)~~ (10) all Domestic bison imported under this rule shall be officially identified prior to importation and listed on the official health certificate; and

~~(11)~~ (11) all Domestic bison imported into Montana must meet the interstate requirements set forth in Title 9 CFR.

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

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

REASON: MDOL previously outlined in Official Order 10-01-I import requirements now superseded by ARM 32.3.212, effective June 22, 2012. The portion of the Official Order that addressed the importation of domestic bison was omitted in the ARM 32.3.212 amendment. Those bison requirements are now being added to ARM 32.3.224 which accurately reflect office policy and the superseded order on tuberculosis testing requirements of domestic bison.

4. Concerned persons may submit their data, views, or arguments in writing to Christian Mackay, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., January 24, 2014.

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

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

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have

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

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

DEPARTMENT OF LIVESTOCK

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

BY: /s/ Robert Stutz
Robert Stutz
Rule Reviewer

Certified to the Secretary of State December 16, 2013

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 36.12.101, 36.12.102,) PROPOSED AMENDMENT AND
36.12.103, 36.12.115 and the) ADOPTION
adoption of New Rules I and II)
regarding water right combined)
appropriation)

To: All Concerned Persons

1. On January 23, 2014, at 10:00 a.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (bottom floor), Water Resources Building, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than January 13, 2014, to advise us of the nature of the accommodation that you need. Please contact Millie Heffner, Montana Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620-1601; telephone (406) 444-0581; fax (406) 444-0533; e-mail mheffner@mt.gov.

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

36.12.101 DEFINITIONS Unless the context requires otherwise, to aid in the implementation of the Montana Water Use Act and as used in these rules:

(1) through (12) remain the same.

(13) "Combined appropriation" means an appropriation of water as used under 85-2-306(3)(a), MCA, from the same source aquifer (as defined in (58) below) by two or more groundwater developments, ~~that are physically manifold into the same system~~ for 40 acres or less for or within:

(a) a subdivision as defined in 76-3-103, MCA, where the subdivision application is deemed to contain sufficient information for review by the governing body under 76-3-604(2), MCA, after [the effective date of these rules];

(b) land that is divided under 76-3-201(1)(a) and 76-3-207(1)(b) and (c), MCA, after [the effective date of these rules]; or

(c) a tract of record, as defined in 76-3-103, MCA, in existence on or before [the effective date of these rules]. A tract of record in existence on or before [the effective date of these rules] with 40 acres or less may have a combined appropriation up to 10 acre-feet per year under 85-2-306(3)(a)(iii), MCA; and

(d) if a subdivision under (a), land divided under (b), or a tract of record under (c) is in excess of 40 acres then the water user may have an additional combined

appropriation for every 40 acres not to exceed a volume that is proportional to 40 acres or 0.25 acre feet per year for each acre under 85-2-306(3)(a)(iii), MCA.

(14) through (57) remain the same.

(58) "Same source aquifer" solely as related to "combined appropriation" as defined in (13) means:

(a) unconsolidated sediments throughout the state and underlying basin-fill sediments and/or sedimentary rocks in intermontane valleys, unless the applicant demonstrates that the aquifers are separate and not connected; or

(b) bedrock consisting of all consolidated geologic units not identified in (a) unless the applicant demonstrates that the individual geologic units are separate and not connected; and

(c) aquifers under (a) and (b) are not presumed to be connected into the same source aquifer.

(58) through (79) remain the same but are renumbered (59) through (80).

AUTH: 85-2-113, 85-2-306, MCA

IMP: 85-2-306, MCA

36.12.102 FORMS (1) The following necessary forms for implementation of the act and these rules are available from the Department of Natural Resources and Conservation, P.O. Box 201601, Helena, Montana 59620-1601 and its Water Resources regional offices, or on the World Wide Web at <http://dnrc.mt.gov/wrd/default.asp>. The department may revise as necessary the following forms to improve the administration of these rules and the applicable water laws:

(a) through (ah) remain the same.

(ai) Form No. 651, "Petition to Modify a Permit or Change Authorization"; ~~and~~

(aj) Form No. 652, "Petition for Stream Depletion Zone-"; ~~and~~

(ak) Form No. 653, "Pre-Approval for Notice of Completion."

AUTH: 85-2-113, 85-2-306, MCA

IMP: 85-2-306

36.12.103 FORM AND SPECIAL FEES

(1) remains the same.

(2) The department will assess the following filing fees:

(a) through (z) remain the same.

(aa) \$400 for Form No. 651, Petition to Modify a Permit or Change Authorization; ~~and~~

(ab) \$750 for Form No. 652, Petition for Stream Depletion Zone-; ~~and~~

(ac) \$50 for Form No. 653, Pre-Approval for Notice of Completion.

(3) through (4) remain the same

AUTH: 85-2-113, 85-2-306, MCA

IMP: 85-2-306, MCA

36.12.115 WATER USE STANDARDS

(1) remains the same.

(2) The department will use the following standards when reviewing notices or applications for new uses of water:

(a) for domestic use, for one household, 250 gallons per day up to 1.0 acre-foot per year of water for year-round use;

(b) through (6) remain the same.

AUTH: 85-2-113, MCA

IMP: 85-2-302, 85-2-306, MCA

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

NEW RULE I NOTICE OF COMPLETION (1) A notice of completion is correct and complete pursuant to 85-2-306(3)(b) and (c), MCA, if:

(a) it limits the total combined appropriation to the requirements under ARM 36.12.101(13) and is consistent with a pre-approval, if applicable; and

(b) it contains all the information on Form No. 602.

AUTH: 85-2-306, MCA

IMP: 85-2-306, MCA

NEW RULE II PRE-APPROVAL OF EXEMPT WELLS (1) An applicant may seek pre-approval from the department to determine if a combined appropriation is within the requirements of ARM 36.12.101(13).

(2) When making a determination on a pre-approval the department will use the following standards:

(a) ARM 36.12.115;

(b) Form No. 615; and

(c) for types of water use that are not referenced in (a) and (b), the applicant must provide information to support the amount needed.

(3) The department shall make a determination on a pre-approval that a proposed plan for development is within the requirements of ARM 36.12.101(13) within 20 working days of submission of a correct and complete pre-approval application.

AUTH: 85-2-306, MCA

IMP: 85-2-306, MCA

REASONABLE NECESSITY: By order of the Montana First Judicial District Court, Lewis and Clark County, in CFC et al. v. DNRC, Cause No. BDV-2010-874, DNRC is required to define the term "combined appropriation" in 85-2-306, MCA, because no legislation was passed during the 2013 legislative session that defined the term. The amendments to ARM 36.12.101 and the adoption of New Rules I and II are reasonably necessary because the order requires that the definition be broader than, and not solely limited to: wells or developed springs that are physically manifold or connected together; and, that DNRC consider cumulative or collective impacts as a result of multiple, unconnected wells or developed springs that appropriate water

from a single source aquifer and for a single project. DNRC had also previously found in its public declaratory ruling proceeding conducted pursuant to the Montana Administrative Procedure Act (2-4-308 and 2-4-501, MCA) Declaratory Ruling, Petition for Declaratory Ruling and Request to Amend Rule 36.12.101(13), DNRC (2010), that the definition of "combined appropriation" needed to be amended for the reasons set forth in its ruling.

The amendments to ARM 36.12.101 are based on the 40-acre standard under 85-2-306, MCA, for exempt stock pits in order to create a consistent standard for future combined appropriations of exempt wells or developed springs for subdivisions, divisions of land, or wells that are located on the same tract of land. Additionally, DNRC believes the amended ARM 36.12.101(13) embodies and clarifies the single "project or development" concept of the "combined appropriation" definition promulgated by DNRC in 1987, contemporaneous to the addition of the term to statute in 85-2-306, MCA.

The amendments to ARM 36.12.101(58) are reasonably necessary to clarify the definition of "same source aquifer" and to identify which aquifers will be considered connected for the sole purpose of combined appropriations. This amendment is necessary because exempt wells do not go through the same site-specific analysis that other appropriations of water must go through before they are permitted to determine: what sources of water will be depleted; if water is legally available; and, if the new appropriation will have an adverse effect on other appropriators. The amendments to ARM 36.12.115 are based on the standards for water use provided by the Department of Environmental Quality (DEQ) for an average household in order to create a consistent standard for use between the two departments.

Pursuant to 85-2-113, MCA, DNRC may prescribe fees for public service provided under the Montana Water Use Act. DNRC evaluated processing costs for the new form to determine the fee amount for Form No. 653. The proposed fee is expected to generate \$25,000 per year and affect approximately 500 people.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted in writing to Millie Heffner, Department of Natural Resources and Conservation, P.O. Box 201601, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-0533; or e-mail mheffner@mt.gov, and must be received no later than 5:00 p.m. on January 23, 2014.

6. David Vogler, Department of Natural Resources and Conservation, has been designated to preside over and conduct the public hearing.

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

development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. 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 Lucy Richards, P.O. Box 201601, 1625 Eleventh Avenue, Helena, MT 59620; fax (406) 444-2684; e-mail lrichards@mt.gov; 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 department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that 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.

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 and adoption of the above-referenced rules will significantly and directly impact small businesses.

/s/ John E. Tubbs
JOHN E. TUBBS
Director
Natural Resources and Conservation

/s/ Candace F. West
Candace F. West
Rule Reviewer

Certified to the Secretary of State December 16, 2013.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.40.830 pertaining to hospice) PROPOSED AMENDMENT
reimbursement)

TO: All Concerned Persons

1. On January 15, 2014, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

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 January 8, 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 rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.40.830 HOSPICE, REIMBURSEMENT (1) remains the same.

(2) The department hereby adopts and incorporates by reference 42 CFR 418.302, effective August 6, 2009, and 42 CFR 418.306, effective August 8, 2008, as amended through October 1, 1988, which sets forth the Medicare payment procedures. Copies of 42 CFR 418.302 and 42 CFR 418.306, as amended through October 1, 1988, are available from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. at the federal web site: <http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html>.

(3) The board and room rate to be paid a hospice for a Medicaid recipient who resides in a nursing facility (~~SNF/ICF~~) will be the Medicaid rate established by the department in ARM 37.40.307 for the individual facility minus the amount the recipient pays toward his own cost of care. Payment for board and room will be made to the hospice and, in turn, the hospice will reimburse the nursing facility. General inpatient care or hospice respite care in a nursing facility will not be reimbursed directly by the Medicaid program when a Medicaid recipient elects the hospice benefit payment. Under such circumstances payment will be made to the hospice in accordance with this rule.

(a) through (7) remain the same.

(8) The department hereby adopts and incorporates by reference 42 CFR 418.309, effective August 4, 2011, as amended through October 1, 1988, which sets forth Medicare's methodology for calculating the hospice cap amount. Copies of 42 CFR 418.309, as amended through October 1, 1988, are available from the Department of Public Health and Human Services, Health Policy and Services Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. at the federal web site: <http://cms.hhs.gov/Medicare/Medicare-Fee-for-Service-Payment/Hospice/index.html>.

(9) and (10) remain the same.

(11) The hospice fee schedules are effective October 1, 2013. Copies of the department's current fee schedules are posted at <http://medicaidprovider.hhs.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59602-2951.

AUTH: 53-6-113, MCA

IMP: 53-6-101, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.40.830, pertaining to hospice reimbursement. The proposed amendments to this rule incorporate changes to the federal register for hospice reimbursement which include an effective date and update references to the administrative rule; and will correctly direct people to additional information.

Fiscal Impact

This proposed amendment will have a fiscal impact on the hospice program. In Fiscal Year 2012, 400 Medicaid recipients received the hospice benefit and 27 agencies delivered hospice services.

Hospice rates are affected by a wage index, which is applied by county. A majority of counties in Montana will see an increase. The average increase is 1 percent. A majority of hospice's \$4.5 million budget covers nursing facility room and board. A 1 percent increase in non-room-and-board hospice services is projected to be \$14,000.

There are two counties that will experience a rate decrease, Cascade and Missoula. The rate decrease in Missoula County is minimal and the fiscal impact will be negligible. There are two hospice agencies that service Missoula County. The decrease in Cascade County is about 3 percent, which is anticipated to cost \$5900 based on 2013 paid claims. There is one hospice agency that serves Cascade County.

The increase in hospice rates will be retroactive to October 1, 2013. The decrease in hospice rates will be effective upon adoption of the rule. If any provider would

experience a decrease in hospice rates, the decrease will not be applied retroactively. It will begin on the final adoption of this proposed rule. Therefore, there will be no retroactive negative impact to any hospice program.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., January 23, 2014.

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

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

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

9. The 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/ Valerie A. Bashor
Valerie A. Bashor
Rule Reviewer

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

Certified to the Secretary of State December 16, 2013.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 37.91.102, 37.91.106,) PROPOSED AMENDMENT
37.91.201, 37.91.205, 37.91.210,)
37.91.220, 37.91.401, 37.91.402,)
37.91.407, and 37.91.601 pertaining)
to certification of mental health)
professional person)

TO: All Concerned Persons

1. On January 16, 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 amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on January 9, 2014, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.91.102 EXEMPTIONS (1) remains the same.

(2) Advanced practice registered nurses with a clinical specialty in psychiatric mental health nursing are designated mental health professional persons under 53-21-102, MCA, and are therefore exempt from the provisions of ARM 37.91.106.

(3) Licensed psychologists are designated mental health professional persons under 53-21-102, MCA, and are therefore exempt from the provisions of ARM 37.91.106.

AUTH: 53-21-102, 53-21-106, MCA

IMP: 53-21-102, 53-21-106, MCA

37.91.106 DEFINITIONS (1) remains the same, but is renumbered (10).

(2) remains the same, but is renumbered (9).

(3) remains the same, but is renumbered (8).

(4) remains the same, but is renumbered (1).

(5) "Clinical mental health experience" means work experience evaluating persons for mental illness and providing direct mental health treatment to a caseload which includes persons 18 years and older who are seriously impaired due to mental illness. Such experience must take place in an agency, organization, or unit within an organization in which the primary purpose is the treatment of mental disorders.

(6) "Department" means the Department of Public Health and Human Services provided for in 2-15-2201, MCA.

~~(6)~~ (3) "Certification committee" means the committee established to rule on applications for certification. The committee consists of three members, the committee chairperson and 2 two members appointed by the chairperson and approved by the director of the department of corrections, 2 members appointed by the director of the department of public health and human services and a chairman appointed by the governor. The chairperson is appointed by the director of the department. At least 4 one member of the committee must have full mental health professional person certification.

~~(7)~~ (2) "Approved facility training program" means a course of instruction and supervised clinical experience planned and conducted by the employing facility and approved by the department of ~~public health and human services~~ and by the certification committee. An approved facility training program ~~shall~~ must include:

(a) a minimum of ~~6~~ six months of full-time clinical experience in the facility; and ~~shall include~~

(b) instruction on Montana law; these rules; and facility policies, practices, and procedures as they relate to the privileges described in ARM 37.91.407.

(i) An approved facility training program must be directed by a professional person with full mental health certification who is responsible for its overall implementation and maintenance and for periodic review of each trainee's progress.

(ii) The clinical experience component of the approved training program must include instruction in, observation of, and supervised participation in all facility procedures involving or requiring the privileges specified in ARM 37.91.407. The trainee's clinical experience must be directly supervised by a professional person with either full or facility mental health certification who will report to the training director on a regular schedule.

~~(8)~~ (4) "Clinical competency evaluation" means a clinic-based procedure and written instrument for the assessment of an applicant's conceptual understanding of and competency in using the materials and skills presented in the approved facility training program. A clinical competency evaluation ~~shall~~ will be designed and conducted by the facility and must be approved as to form and content by the department of ~~public health and human services~~ and by the certification committee. The clinical competency evaluation must be supervised by a professional person with full mental health certification who will endorse the individual's application for facility mental health certification upon successful performance in the evaluation.

~~(9)~~ (7) "Facility" means a mental health facility as defined in ~~53-21-101(7)~~ 53-21-102, MCA.

AUTH: 53-21-106, MCA

IMP: 53-21-106, MCA

37.91.201 APPLICATION PROCESS (1) Application for professional person certification will be made on forms provided by the department of ~~public health and human services~~.

(2) An applicant for full mental health certification must submit documentation of academic training, documentation of current Montana licensure as a clinical mental health ~~experience professional~~, letters of reference testifying to clinical competence, and an endorsement by a professional person with full mental health certification indicating that the applicant fully understands the responsibilities of a professional person. In addition, an applicant for full mental health certification must successfully complete a written examination covering knowledge of Title 53, chapter 21, MCA and the mental health services in the state to include the role of, and treatment services provided at, the Montana state hospital.

(3) and (4) remain the same.

~~(5) The certification committee has the authority to rule on the relevancy, adequacy and appropriateness of the education and experience of applicants as they relate to the requirements contained in ARM 37.91.401 and 37.91.406.~~

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

AUTH: 53-21-106, MCA

IMP: 53- 21-106, MCA

37.91.205 EXPIRATION AND RENEWAL OF CERTIFICATION

(1) Professional person certification will expire ~~3~~ three years from the date of certification.

(2) through (4) remain the same.

AUTH: 53-21-106, MCA

IMP: 53- 21-106, MCA

37.91.210 REVOCATION OF CERTIFICATION (1) The certification

committee may revoke an individual's certification for any of the following reasons:

(a) ~~M~~misrepresentation of professional person authority;

(b) ~~E~~exercising professional person authority regarding the treatment of a patient without personal knowledge of the patient, ~~and/or situation, or both~~;

(c) ~~C~~conduct in violation of patient rights as cited in Title 53, chapter 21, part 1, MCA;

(d) ~~P~~providing an endorsement for an applicant for facility mental health certification without personal knowledge of the applicant's successful performance on the clinical competency evaluation; and

(e) failing to meet ongoing educational requirements or suspension or revocation of their mental health professional license.

(2) remains the same.

AUTH: 53-21-106, MCA

IMP: 53-21-106, MCA

37.91.220 CONTINUATION OF CERTIFICATION (1) Persons who are certified as a ~~limited full~~ mental health professional person as of the date of final adoption of these rules will be granted ~~facility full~~ mental health certification for the facility in which they are employed on that date for a period of two years or the length of time required to obtain licensure, whichever is shortest, until the expiration date of their present certification or for 1 year, whichever is greater. ~~To continue facility mental health certification thereafter the previously certified individual must meet the requirements of ARM 37.91.406. The certification committee may, upon request of the previously certified individual and concurrence of the facility's superintendent or director, waive the requirement of completion of the facility's approved training program.~~

AUTH: 53-21-106, MCA

IMP: 53-21-106, MCA

37.91.401 REQUIREMENTS FOR FULL MENTAL HEALTH CERTIFICATION (1) Applicants for full mental health certification must demonstrate successful performance as licensed mental health clinicians, a thorough understanding of the statutory responsibilities of a mental health professional person, and knowledge of the full range of mental health services in Montana. Licensed clinicians who relocate to Montana and have never performed professional person duties in any other state must have at least three months' experience as a Montana mental health professional person in training before applying for certification. ~~In addition, to obtain full mental health certification a person must:~~

~~(a) have earned a doctoral degree from an accredited college or university in a field of study which is clearly identified as preparing the student for the clinical treatment of mental illness and have at least 6 months of full-time clinical mental health experience following receipt of the doctoral degree; or~~

~~(b) have earned a master's degree in social work from an accredited college or university in a curriculum when included at least 3 courses in therapeutic techniques for treating mental illness and have at least 1 year of full-time clinical mental health experience following receipt of the master's degree; or~~

~~(c) have earned a master's degree in clinical or counseling psychology from an accredited college or university and have at least 1 year of full-time clinical mental health experience following receipt of the master's degree; or~~

~~(d) have earned a master's degree in psychiatric nursing from an accredited college or university and have at least 1 year of full-time clinical mental health experience following receipt of the master's degree; or~~

~~(e) have earned a master's degree in a human services field other than social work, clinical psychology, counseling psychology, or psychiatric nursing from an accredited college or university in a curriculum with a preponderance of course work and practicum experience in a clinical mental health area and have at least 2 years of full-time clinical mental health experience following receipt of the master's degree; or~~

~~(f) be a registered nurse with a bachelor's degree in nursing from an accredited college or university and have 5 years of full-time clinical mental health experience following receipt of the bachelor's degree.~~

~~(2) Applicants with a master's degree in a field which is relevant to some aspect of treatment of mental illness and who have at least 5 years of full-time clinical mental health experience may be granted full mental health certification based upon a special review by the certification committee of the individual's clinical mental health experience and letters of reference testifying to clinical competence. Such applicants must demonstrate a degree of competence and knowledge which is, in the opinion of the certification committee, equivalent to that of individuals with the training and experience listed above.~~

AUTH: 53-21-106, MCA

IMP: 53-21-106, MCA

37.91.402 PRIVILEGES OF FULL MENTAL HEALTH CERTIFICATION

(1) A professional person with full mental health certification is qualified to:

(a) through (h) remain the same.

(i) supervise approved training programs and clinical competency evaluations; and

(j) perform all the privileges specified in ARM 37.91.407(1).

(2) remains the same.

AUTH: 53-21-106, MCA

IMP: 53-21-106, MCA

37.91.407 PRIVILEGES OF FACILITY MENTAL HEALTH CERTIFICATION

(1) A professional person with facility mental health certification is qualified to:

(a) remains the same.

~~(b) authorize restriction of a patient's rights when such restrictions are necessary to achieve treatment goals in accordance with the facility's written policies;~~

~~(c) authorize and monitor restraint or seclusion of inpatients in accordance with the facility's written policies;~~

~~(d) (b) supervise nonprofessional staff in accordance with the facility's written policies; and~~

(e) remains the same, but is renumbered (c).

AUTH: 53-21-106, MCA

IMP: 53-21-106, MCA

37.91.601 APPEAL PROCESS (1) Any action of the certification committee concerning certification denial or revocation may be appealed to the director of the department of public health and human services. All findings and actions of the director ~~shall~~ will be binding on the certification committee.

(2) The notice of appeal shall must be directed to the director of the department of ~~public health and human services~~ who may appoint a hearings officer.

(3) The appeal shall must be in writing setting forth the nature of the grievance and arguments supporting the grievance and actions desired. The appealing party may also present oral argument before the director or hearings officer.

(4) All parties to the appeal shall will be notified in writing 40 ~~ten~~ days prior to the hearing. The written notice shall must contain as a minimum, the date, day, time, and location of the hearing.

(5) The guidelines for conducting the hearing shall will be established by the director.

(6) remains the same.

AUTH: 53-21-106, MCA

IMP: 53-21-106, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.91.102, 37.91.106, 37.91.201, 37.91.205, 37.91.210, 37.91.220, 37.91.401, 37.91.402, 37.91.407, and 37.91.601 pertaining to the certification of a mental health professional person. The proposed changes will correct outdated material and improve the integrity of the mental health commitment process by raising the standard of qualifications to a more professional level.

Besides updating the rules since they were first implemented under the Department of Corrections, the proposed amendments are needed to correct an ongoing problem. The current rules do not require a "professional person" to be a licensed mental health professional in Montana. It is the department's determination that the role of evaluating a Montana citizen for involuntary commitment to the Montana State Hospital is a grave responsibility. It should carry with it, at the very least, the credential of a professional mental health license, along with the 2000 hours of professional experience required to qualify for the license. This rule is intended to avoid unnecessary disclosure of an applicant's college transcripts and other confidential information. The proposed rule defers to the Montana Business Standards Division of the Department of Labor and Industry regarding the standard for the certification of a candidate for a professional person's qualifications and experience.

ARM 37.91.102

The department is proposing to add two exemptions from the provisions of ARM 37.91.106. They include licensed psychologists and advanced practice registered nurses with a clinical specialty in psychiatric mental health nursing. This is necessary to conform the rule to the definition of "professional person" in 53-21-102, MCA.

ARM 37.91.106

The department is proposing to amend (5) to specify that "persons" for purposes of mental health commitment means someone 18 years and older. Section (6) updates the rule to reflect current procedure for who appoints "certification committee" members. These rules are no longer under the Department of Corrections. The department is also proposing to add the term "facility" to specify that it is only facility professional persons who are required to complete a training program.

ARM 37.91.201

The department is proposing to specify that an applicant for "professional person" designation must submit documentation of current Montana licensure as a clinical mental health professional instead of just documentation of mental health experience. This is necessary to ensure the applicant is qualified to become a "professional person."

ARM 37.91.205, 37.91.402, and 37.91.601

The department is proposing a grammatical correction to meet the Montana Secretary of State standards as found in the Gregg Reference Manual.

ARM 37.91.210

The department is proposing to add "failing to meet ongoing educational requirements or suspension or revocation of their health professional license" to the reasons for the revocation of certification as a mental health professional person. This is necessary to ensure that a professional person remains qualified to be a "professional person."

ARM 37.91.220

This rule is out of date and no longer applies to the current certification process. The department is proposing to add language that will require a full mental health certification, on the date of adoption, of these rules. Mental health professional persons who are not currently licensed must obtain the necessary supervised clinical hours and obtain licensure within two years, or the length of time necessary to obtain licensure, whichever is shortest.

ARM 37.91.401

The department is proposing to add language in (1) that applicants who relocate to Montana must obtain at least three months' experience as a mental health clinician in Montana before applying for certification. Sections (1)(a) through (2) are being deleted because they are no longer necessary with the inclusion of a licensure requirement.

ARM 37.91.407

The department is proposing to delete (1)(b) and (1)(c) because the facility policy does not authorize facility professional persons to either restrict patients' rights or authorize restraint or seclusion. The Centers for Medicare and Medicaid Services (CMS) authorize only a licensed physician to perform these duties.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., January 23, 2014.

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

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

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

9. The 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 rules will not significantly and directly impact small businesses.

/s/ John Koch
John Koch
Rule Reviewer

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

Certified to the Secretary of State December 16, 2013.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rules I through III and the amendment	)	PROPOSED ADOPTION AND
of ARM 42.12.101, 42.12.106,	)	AMENDMENT
42.12.111, 42.12.126, 42.12.137,)	
42.12.143, and 42.12.315 regarding)	
liquor licenses)	

TO: All Concerned Persons

1. On January 27, 2014, at 1:30 p.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on January 16, 2014. Please contact Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov.

3. The proposed new rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I ELECTRONIC SUBMISSION OF DOCUMENTS AND ELECTRONIC SIGNATURES (1) The department may accept electronic submission of certain documents through the licensing portal.

(2) An electronically submitted document is only complete if:

(a) all requested information is provided; and

(b) the submitter is the applicant, licensee, or an authorized representative of the applicant or licensee.

(3) By electronically submitting a document, the submitter declares, under the penalty of false swearing, that:

(a) the information submitted is true, correct, and complete; and

(b) the submitter is the applicant, licensee, or an authorized representative of the applicant or licensee.

(4) An electronically submitted document is subject to the same deadlines as a document submitted in paper form.

AUTH: 16-1-303, MCA

IMP: 16-4-402, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to accept electronic signatures on certain documents submitted for liquor licensing. The Liquor Control Division is developing an online program that will enable individuals to apply for an alcoholic beverages license and manage those licenses electronically through the department's Taxpayer Access Point program. The online program will be an added convenience for licensees and the proposed rule will provide the requirements for using the system.

NEW RULE II SACRAMENTAL WINE MONTHLY REPORTS AND TAX RETURNS (1) All licensees that sell sacramental wine to persons or entities in Montana must file the forms provided in (2) through (4) of this rule and pay any tax due on or before the 15th day of each month following the sale of sacramental wine.

(2) The following licensees shall file the Wine Distributors and Wineries Monthly Tax Return (Form WIT):

(a) sacramental wine licensees located outside Montana for sacramental wine sold to officials of churches or other established religious organizations;

(b) licensed foreign wineries for sacramental wine containing not more than 16 percent alcohol by volume sold to licensed retailers and for sacramental wine containing not more than 24 percent alcohol by volume sold to sacramental wine licensees;

(c) licensed domestic wineries for sacramental wine containing not more than 16 percent alcohol by volume sold to licensed retailers and for sacramental wine containing not more than 24 percent alcohol by volume sold to sacramental wine licensees; and

(d) table wine distributors for sacramental wine containing not more than 16 percent alcohol by volume sold to licensed retailers and for sacramental wine containing not more than 24 percent alcohol by volume sold to sacramental wine licensees.

(3) Licensed foreign and domestic wineries that sell sacramental wine directly to licensed retailers or sacramental wine licensees shall file the Monthly Sales Report for Sales to Retailers, Consumers and Sacramental Wine Licensees Located Within Montana (Form WIT-3) to report the amount of sacramental wine sold to each retailer and each sacramental wine licensee. Form WIT-3 is to be filed in conjunction with Form WIT.

(4) Licensed foreign and domestic wineries that sell sacramental wine to a table wine distributor shall report the amount of sacramental wine sold to each table wine distributor on the Monthly Report of Wine Shipments into the State of Montana (Form WSM).

(5) Licensed retailers and in-state sacramental wine licensees that purchase sacramental wine from a licensed foreign or domestic winery shall report the amount of wine purchased from each winery on the Wine Retailer Monthly Report for Purchases from a Winery Located Outside of Montana (Form WIT-2).

AUTH: 16-1-303, MCA

IMP: 16-1-411, 16-4-313, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II based on the passage of Senate Bill 266, L. 2013. The purpose of the rule is to enhance the industry's understanding about who is responsible for paying the tax on shipments of sacramental wine and to reduce confusion by providing the names of the reporting forms required to be filed and when they need to be filed.

NEW RULE III SACRAMENTAL WINE SALES RESTRICTIONS BY ALCOHOL CONTENT (1) Sacramental wine may be sold in Montana only in conformity with the guidelines provided in (2) through (6) of this rule.

(2) Sacramental wine licensees may sell sacramental wine containing up to 24 percent alcohol by volume to officials of churches or other religious organizations.

(3) Registered foreign wineries may sell sacramental wine containing up to 24 percent alcohol by volume to licensed table wine distributors.

(4) Licensed foreign wineries may sell sacramental wine containing not more than 16 percent alcohol by volume to licensed retailers and sacramental wine containing not more than 24 percent alcohol by volume to table wine distributors and sacramental wine licensees.

(5) Licensed domestic wineries may sell sacramental wine containing not more than 16 percent alcohol by volume to licensed retailers and sacramental wine containing not more than 24 percent alcohol by volume to table wine distributors and sacramental wine licensees.

(6) Table wine distributors may sell sacramental wine containing not more than 16 percent alcohol by volume to licensed retailers and sacramental wine containing not more than 24 percent alcohol by volume to sacramental wine licensees.

AUTH: 16-1-303, MCA

IMP: 16-4-107, 16-4-108, 16-4-313, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule III due to the passage of Senate Bill 266, L. 2013, and to help educate the alcoholic beverage industry regarding to whom they can sell sacramental wine, which is based on the alcohol content of the wine.

A licensee is only allowed to purchase those alcoholic beverages for which they are licensed. By listing the entity and alcohol content in rule relative to sacramental wine sales restrictions, it will help reduce confusion and better enable licensees and registrants to comply with the Montana Alcoholic Beverage Code.

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

42.12.101 APPLICATION FOR LICENSE (1) through (3) remain the same.

(4) Upon receipt of an application for a license to sell, manufacture, or distribute alcoholic beverages, the department shall make a thorough investigation as to the qualifications of the applicant and the suitability of the premises proposed for licensing. If, upon such investigation, it appears that the applicant is qualified under the law, and the premises ~~is~~ are suitable for licensing under the laws of the state and the rules of the department, the department shall issue the license if all

other requirements of the law and these rules are fulfilled. Temporary authority may be granted to applicants for a retail alcoholic beverages license if the requirements of ARM 42.12.208 are met.

(5) Following approval of an application, the licensee remains bound by all requirements in statute and rule that apply to an applicant at the time of application. A licensee's failure to remain in compliance with a statute or rule shall constitute a violation of that statute or rule and may subject the licensee to penalties.

~~(5)(6)~~ Except as provided in ~~(10), (11), and (12)~~ (11), (12), and (13), an ownership interest may not be transferred to a new owner until an application has been submitted to the department and the department approves the transfer.

(6) through (13) remain the same, but are renumbered (7) through (14).

AUTH: 16-1-303, MCA

IMP: 16-3-310, 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-401, 16-4-402, 16-4-414, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.101 to reflect both the department's current practice and its understanding of the intent of the Montana Alcoholic Beverage Code. Requirements with regard to licensee qualification and premises suitability must be continuing obligations after license approval in order to be of any practical effect. The department's current practice is to consider these obligations on an ongoing basis.

42.12.106 DEFINITIONS The following definitions apply to this ~~subchapter~~ chapter:

(1) "Affiliation" means relationships including, but not limited to, those wherein a party directly or indirectly owns or controls another party, parties are under common ownership or control, and one party is a subordinate or employee of another party.

(1) through (27) remain the same, but are renumbered (2) through (28).

(29) "Stand-alone beer and/or table wine business" means a business in which 95 percent of the business's annual gross income comes from the sale of beer, table wine, or both.

(28) through (30) remain the same, but are renumbered (30) through (32).

AUTH: 16-1-303, MCA

IMP: 16-1-106, 16-3-311, 16-4-105, 16-4-205, 16-4-207, 16-4-301, 16-4-401, 16-4-402, 16-4-404, 16-4-413, 16-4-420, 16-4-423, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.106 to revise the introductory clause for the definitions to clarify that the defined terms retain their specified meanings for all of chapter 12, including liquor licenses and permits, not only to subchapter 1 regarding license applications.

The department proposes to include a definition for the term "affiliation" because that term is used in several statutes as well as a rule proposed to be amended in this same notice. Defining this term will help licensees understand what types of relationships limit eligibility to hold other licenses.

The department further proposes to amend the rule based on the passage of House Bill 524, L. 2013, which allows for the retail sale of beer and/or table wine for off-premises consumption in certain circumstances without the requirement of operating as a bona fide grocery store or drugstore licensed as a pharmacy. The department proposes to refer to these retail establishments as a stand-alone beer and/or table wine business and define the term to clarify the eligibility requirements for this type of business.

The department proposes to define a stand-alone beer and/or table wine business as one that 95 percent of the business's annual gross income comes from the sale of beer and/or table wine. In collaboration with the bill's sponsor, the department believes this is a fair percentage and maintains the intent of the law.

42.12.111 PROCESSING FEES (1) through (1)(q) remain the same.

(r) Sacramental wine license.....\$100 \$50

(s) through (5) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-1-303, 16-4-313, 16-4-414, 16-4-420, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.111 based on the passage of Senate Bill 266, L. 2013. The bill reduced the processing fee associated with sacramental wine licenses from \$100 to \$50. The proposed amendment will create continuity with 16-4-313, MCA.

42.12.126 OFF-PREMISES SALE OF BEER OR TABLE WINE (1) A retail alcoholic beverages license to sell beer or table wine in the original packages for off-premises consumption may only ~~may be issued to any person or entity approved by the department as a fit and proper person or entity to sell beer or table wine, and whose~~ when the premises proposed for licensing are operated as a bona fide grocery store, or a drugstore licensed as a pharmacy, or a stand-alone beer and/or table wine business.

(2) remains the same.

AUTH: 16-1-303, MCA

IMP: ~~16-4-105~~ 16-4-115, ~~16-4-401~~, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.126 to remove language addressing the requirement that the person or entity be "fit and proper," because such language merely reiterates the requirements set forth in 16-4-401, MCA, and is not the primary subject addressed in this rule. Accordingly, that statute is also being removed as an implementing citation.

The department further proposes amending the rule to incorporate a stand-alone beer and/or table wine business as a premises type that may be approved for a retail license to sell beer, table wine, or both for off-premises consumption.

House Bill 524, L. 2013, allows a retail off-premises beer and/or table wine license to be issued to a business that does not operate in conjunction with another business. The proposed amendment is intended to enhance the public's

understanding of the business models that may be approved. The department proposes to update the implementing citations by striking 16-4-105, MCA, and adding 16-4-115, MCA, to incorporate the legislative changes and more correctly reflect the rule content.

42.12.137 CONDITIONS AND QUALIFICATIONS SPECIFIC FOR AN OFF-PREMISES BEER LICENSE AND/OR WINE LICENSE (1) In addition to the provisions stated in ARM 42.12.122, which pertain to every type of alcoholic beverage license, with regard to a license for off-premises consumption, a party applying for either a new license, transfer of ownership of an existing license, transfer of location of an existing license, or approval of an alteration to a premises must:

(a) operate at a premises recognized as a bona fide grocery store as described in ARM 42.12.126, ~~or a drugstore licensed as a pharmacy, as described in ARM 42.12.126~~ or a stand-alone beer and/or table wine business;

(b) through (3) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-115, 16-4-402, 16-4-405, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.137 based on the passage of House Bill 524, L. 2013. The rule needs to be updated as a retail off-premises consumption beer and/or table wine license may be issued to a business without having to operate as a bona fide grocery store or drugstore licensed as a pharmacy.

The proposed amendment is intended to enhance the public's understanding of the business models that may be approved.

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES (1) ~~For purposes of this rule, any ownership interest in a business that operates a license issued under the Montana Alcoholic Beverage Code is considered to be an ownership interest in the license itself. Except as provided in 16-4-205, MCA, any person holding an ownership interest in an all-beverages license issued pursuant to 16-4-401, MCA, or, with the exception of (a), any member of their immediate family, as defined in ARM 42.2.304, is not qualified to own an interest in or have any affiliation with:~~

~~(a) another all-beverages license in Montana;~~

~~(b) a Montana beer wholesaler license;~~

~~(c) a Montana table wine distributor license;~~

~~(d) an alcoholic beverage manufacturer;~~

~~(e) an importer of alcoholic beverages; or~~

~~(f) a state agency liquor store.~~

~~(2) Any person holding ownership interest in a Montana retail alcoholic beverages license is not qualified to own an interest in:~~

~~(a) a Montana beer wholesaler license;~~

~~(b) a Montana table wine distributor license;~~

~~(c) an alcoholic beverage manufacturer;~~

- (d) ~~an importer of alcoholic beverages; or~~
- (e) ~~a state agency liquor store.~~

~~(3) Any person holding an ownership interest in a beer wholesaler license issued pursuant to 16-4-401, MCA, or, with the exception of (a), any member of their immediate family, is not qualified to own an interest in or have any affiliation with:~~

- ~~(a) another Montana beer wholesaler license;~~
- ~~(b) an alcoholic beverage manufacturer;~~
- ~~(c) an importer of alcoholic beverages;~~
- ~~(d) a Montana retail alcoholic beverages license; or~~
- ~~(e) a state agency liquor store.~~

~~(4) Any person holding an ownership interest in a table wine distributor's license issued pursuant to 16-4-401, MCA, or, with the exception of (a), any member of their family, is not qualified to own an interest in or have any affiliation with:~~

- ~~(a) another Montana table wine distributor's license;~~
- ~~(b) an alcoholic beverage manufacturer;~~
- ~~(c) an importer of alcoholic beverages;~~
- ~~(d) a Montana retail alcoholic beverages license; or~~
- ~~(e) a state agency liquor store.~~

~~(5) Any person holding an ownership interest in a Montana alcoholic beverage manufacturer pursuant to 16-4-401, MCA, or any member of their immediate family, is not qualified to own an interest in or have any affiliation with:~~

- ~~(a) a Montana retail alcoholic beverage license;~~
- ~~(b) a Montana beer wholesaler license;~~
- ~~(c) a Montana table wine distributor license; or~~
- ~~(d) a state agency liquor store.~~

~~(6) Any person holding an interest in an agency liquor store, or any member of the agent's immediate family, is not qualified to own an interest in or have any affiliation with:~~

- ~~(a) a Montana retail alcoholic beverages license;~~
- ~~(b) a Montana beer wholesaler license;~~
- ~~(c) a Montana table wine distributor license;~~
- ~~(d) an alcoholic beverage manufacturer; or~~
- ~~(e) an importer of alcoholic beverages.~~

(1) For purposes of this rule, any ownership interest in a business that operates a license issued under the Montana Alcoholic Beverage Code is considered to be an ownership interest in the license itself.

(2) A Montana all-beverages licensee may not:

(a) possess a financial or ownership interest in:

(i) a Montana agency liquor store;

(ii) more than two additional Montana all-beverages licenses, for an aggregate number of three licenses, except as provided in 16-4-205, MCA; or

(iii) more than half the total number of Montana all-beverages licenses in any quota area described in 16-4-201, MCA;

(b) through a business or family relationship, share in the profits or liabilities in more than half the total number of Montana all-beverages licenses in the specific quota area in which the licenses will be held; or

(c) individually or through the person's immediate family, receive financing

from or have any affiliation to:

- (i) an alcoholic beverage manufacturer or importer of alcoholic beverages; or
- (ii) a distributor of alcoholic beverages, including a Montana beer wholesaler,

Montana table wine distributor, and a Montana agency liquor store.

(3) A Montana retail alcoholic beverages licensee may not:

(a) possess a financial or ownership interest in a Montana agency liquor store; or

(b) individually or through the person's immediate family, receive financing from or have any affiliation to:

(i) an alcoholic beverage manufacturer;

(ii) an importer of alcoholic beverages; or

(iii) a distributor of alcoholic beverages, including a Montana beer wholesaler, Montana table wine distributor, and a Montana agency liquor store.

(4) A Montana beer wholesaler may not:

(a) possess a financial or ownership interest in a Montana agency liquor store, a Montana alcoholic beverages retailer, an alcoholic beverages manufacturer, or another Montana beer wholesaler;

(b) have any affiliation with a Montana alcoholic beverages retailer, or the immediate family of a Montana alcoholic beverages retailer; or

(c) be owned or controlled by an alcoholic beverages manufacturer or an importer of alcoholic beverages.

(5) A Montana table wine distributor may not:

(a) possess a financial or ownership interest in a Montana agency liquor store, a Montana alcoholic beverages retailer, an alcoholic beverages manufacturer, or another Montana table wine distributor;

(b) have any affiliation with a Montana alcoholic beverages retailer or the immediate family member of a Montana alcoholic beverages retailer; or

(c) be owned or controlled by an alcoholic beverages manufacturer or an importer of alcoholic beverages.

(6) A Montana alcoholic beverage manufacturer may not possess a financial or ownership interest in:

(a) a distributor of alcoholic beverages, including a Montana beer wholesaler, a Montana table wine distributor, and a Montana agency liquor store; or

(b) a Montana alcoholic beverages retailer.

AUTH: 16-1-303, MCA

IMP: 16-4-201, 16-4-205, 16-4-401, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.12.143 based on the passage of Senate Bill 120, L. 2013, and to add clarification for the industry on the restrictions that exist if one holds an alcoholic beverages license through the department.

The department is also proposing to reorganize the current and remaining language as part of the overall restructuring of the rule for better clarity. Therefore, for the purposes of ease of readability and clarity in this proposal notice, all of the existing language is shown as being stricken, in its entirety, and the proposed reorganization of that language, along with any new language being incorporated, is

shown together in its entirety as underlined new text below.

The proposed amendments to new (2) are based on the passage of Senate Bill 120, which increases the number of all-beverage licenses that an individual may possess an ownership interest in from one to three. The proposed amendments will ensure there are no discrepancies between statute and rule.

In addition to increasing the total number of allowable licenses an individual may have an ownership interest in, Senate Bill 120 also prohibits individuals from holding more than half the total number of all-beverage licenses a quota area may have, based on ownership interest or business/family relationships. The department proposes to incorporate these conditions into new (2)(a)(iii) and (2)(b).

The remaining proposed amendments in new (2) through new (6) add clarity to help educate the industry and public on the restrictions that exist regarding other alcoholic beverages licenses. As proposed, these amendments will outline the restriction more clearly to avoid any confusion.

The department proposes to strike old (6) in its entirety and not replace the language in the rule as amended, as the agency liquor store restrictions in other licenses are governed in the agency liquor store's contract with the department. Listing agency liquor stores in this rule adds confusion to the industry, as agency liquor stores do not have a license with the department.

42.12.315 SACRAMENTAL WINE LICENSE (1) An establishment in Montana desiring to sell sacramental wine pursuant to 16-4-313, MCA, may apply to the department by submitting an off-premises wine a license application accompanied by a \$200 \$100 licensing fee, of which \$100 is a processing fee and \$100 is an annual license fee. The license renewal fee every year thereafter is \$50 and must be renewed annually by July 1.

(2) remains the same.

(3) The premises must meet suitability requirements for the retail sale of wine for off-premises consumption, excluding the requirements to operate as a bona fide grocery store or pharmacy. On the application, an applicant operating in Montana must verify that the following requirements are met:

(a) the layout of the premises allows for licensee-only and/or employee-only control over the sale, service, and/or distribution of the sacramental wine;

(b) the floor plan accurately represents the physical layout of the premises and identifies where the sacramental wine will be stored;

(c) the applicant has adequate safeguards in place to prevent the sale, delivery, or giving away of alcoholic beverages to the public; and

(d) the premises is physically separated from any business under separate ownership from the licensed area by permanent walls.

(4) Applicants for a sacramental wine license are not subject to fingerprint or background checks.

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

(5)(6) Sacramental wine containing not more than 16 percent alcohol by volume must be purchased by a sacramental wine licensee from an agency liquor store or licensed Montana wine distributor or winery in Montana. Sacramental wine that is more than 16 percent alcohol by volume must be purchased by a sacramental wine licensee from an agency liquor store. A sacramental wine licensee may

purchase sacramental wine from an agency liquor store, licensed foreign winery, licensed domestic winery, or a table wine distributor.

(6) remains the same, but is renumbered (7).

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-313, 16-4-401, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.315 based on passage of Senate Bill 266, L. 2013. Senate Bill 266 revises sacramental wine laws.

The proposed amendment in (1) strikes the reference to the establishment being in Montana. Senate Bill 266 allows the licensee to be located in or outside of Montana. The fees associated with the license are proposed to be amended to match the change in statute. The department also proposes to include the renewal fee and renewal date within this section for easy reference by the industry.

The proposed amendments in (3) add an outline of the suitability requirements that must be met in order to be considered for licensing by in-state applicants. Senate Bill 266 specifically mentions that the premises must be suitable for carrying out the intended business. The department is proposing these amendments to enhance the industry's understanding of the licensing requirements that must be met in order to be considered suitable.

The amendment in (4) is proposed to coincide with language stricken from 16-4-313, MCA, as a result of the passage of Senate Bill 266, L. 2013; and the proposed amendment to new (6) is to provide clear direction to in-state sacramental wine licensees as to whom they can purchase sacramental wine from.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Laurie Logan, Department of Revenue, Director's Office, PO Box 7701, Helena, Montana 59604-7701; telephone 406.444.7905; fax 406.444.3696; or e-mail lalogan@mt.gov and must be received no later than February 3, 2014.

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

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

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or faxed to the office at 406.444.3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsors of HB 524, Representative Christy Clark, SB 120, Senator Edward Buttrey, and SB 266, L. 2013, Senator Matthew Rosendale, were all notified by regular mail on May 16, 2013, and subsequently notified on December 4, 2013.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed new and amended rules contained in this notice will not significantly and directly impact small businesses.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State December 16, 2013

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rules I through IV pertaining to the	)	AMENDMENT, AND REPEAL
definition of origination of a mortgage)	
loan, certificate of bona fide not-for-)	
profit entity, state-specific prelicensing)	
education, and when an application is)	
deemed abandoned, the amendment of)	
ARM 2.59.1701, 2.59.1702, 2.59.1728,)	
2.59.1731, and 2.59.1743 pertaining to)	
definitions, proof of experience,)	
standardized forms, reinstatement of)	
licenses, and reporting forms for)	
mortgage servicers, and the repeal of)	
ARM 2.59.1725, 2.59.1727, and)	
2.59.1749 pertaining to licensing)	
exemptions, mortgage loan originator)	
testing, and written exemption form)	

TO: All Concerned Persons

1. On October 31, 2013, the Department of Administration published MAR Notice No. 2-59-500 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1866 of the 2013 Montana Administrative Register, Issue Number 20.

2. The department has adopted New Rule I (ARM 2.59.1750), New Rule II (ARM 2.59.1751), and New Rule IV (ARM 2.59.1753) exactly as proposed.

3. The department has amended ARM 2.59.1701, 2.59.1702, 2.59.1728, 2.59.1731, and 2.59.1743 exactly as proposed.

4. The department has repealed ARM 2.59.1725, 2.59.1727, and 2.59.1749 exactly as proposed.

5. The department has adopted the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

NEW RULE III (2.59.1752) STATE-SPECIFIC PRELICENSING
EDUCATION (1) remains as proposed.

(2) This rule will become effective on March 1, 2014.

AUTH: 32-9-107, MCA
IMP: 32-9-107, MCA

6. The department has thoroughly considered the comment and testimony received. A summary of the comment received and the department's response follow:

COMMENT 1: The department received one comment from Bryon Smith of Bryon Smith Mortgage, LLC. He stated that while he agrees it is appropriate for new licensees to take Montana-specific prelicensing education, there is none currently available. He states that he currently uses Training Pro for his continuing education provider, and it would take some time for it to have a Montana course available. He asks that the department consider delaying New Rule III until Montana-specific courses are available from a few online companies.

RESPONSE 1: The department thanks Mr. Smith for his astute comment. Mr. Smith is correct, and the department agrees with his statements. In light of this comment, the department will delay the effective date of New Rule III until March 1, 2014.

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 December 16, 2013.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
4.5.206, 4.5.207, 4.5.208, and 4.5.209)
pertaining to modification of the Noxious)
Weed Priority 1A category statement and)
changing the priority category of dyer's)
woad, flowering rush, Eurasian)
watermilfoil, and curlyleaf pondweed)

TO: All Concerned Persons

1. On November 14, 2013, the Montana Department of Agriculture published MAR Notice No. 4-14-215 relating to the public hearing on the proposed amendment of the above-stated rules at page 2014 of the 2013 Montana Administrative Register, Issue Number 21.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen,
Rule Reviewer

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

Certified to the Secretary of State December 16, 2013.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the repeal of ARM	)	NOTICE OF REPEAL, TRANSFER,
2.12.307, the transfer of ARM	)	AND TRANSFER AND
2.12.301, and the transfer and	)	AMENDMENT
amendment of ARM 2.12.302,)	
2.12.303, 2.12.304, 2.12.305,)	
2.12.306, and 2.12.308 pertaining to)	
the Montana Land Information Act)	

TO: All Concerned Persons

1. On October 31, 2013 the Montana State Library published MAR Notice No. 10-102-1201 pertaining to the proposed repeal, transfer, and transfer and amendment of the above-stated rules at page 1880 of the 2013 Montana Administrative Register, Issue Number 20.

2. The department has repealed the following rule as proposed: ARM 2.12.307.

3. The department has transferred the following rule as proposed: ARM 2.12.301 (10.102.9101).

4. The department has transferred and amended the following rules as proposed: ARM 2.12.303 (10.102.9103), 2.12.304 (10.102.9104), 2.12.305 (10.102.9105), 2.12.306 (10.102.9106), and 2.12.308 (10.102.9107).

5. The department has transferred and amended the following rule as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

2.12.302 (10.102.9102) DEFINITIONS In addition to the definitions found in 90-1-403, MCA, the following definitions apply:

(1) through (7) remain as proposed.

(8) "Theme ~~champions~~ stewards" means those agencies or organizations recognized by the council as having responsibility for promoting land information that is considered part of the Montana spatial data infrastructure.

AUTH: 90-1-413, MCA

IMP: 90-1-404, MCA

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

COMMENT #1: A comment was received informing the department that the change of 'theme champions' to 'theme stewards' had not been carried forward into the definitions.

RESPONSE #1: The department agrees with the comment and has made the appropriate amendment.

/s/ Jennie Stapp
Jennie Stapp
Rule Reviewer

/s/ Richard Quillin
Richard Quillin
Chairman
Montana State Library

Certified to the Secretary of State December 16, 2013

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF AMENDMENT
23.12.601 concerning fire safety,)
fireworks, and Uniform Fire Code)

TO: All Concerned Persons

1. On November 14, 2013, the Department of Justice published MAR Notice No. 23-12-234, pertaining to the proposed amendment of the above-stated rule at page 2027 of the 2013 Montana Administrative Register, Issue Number 21.
2. The department has amended the above-stated rule as proposed.
3. No comments or testimony were received.

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

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

Certified to the Secretary of State December 16, 2013.

BEFORE THE BOARD OF LAND COMMISSIONERS AND
THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New) NOTICE OF ADOPTION,
Rules I through VIII, the amendment) AMENDMENT, AND REPEAL
of ARM 36.25.128, and the repeal of)
36.25.131 regarding cabinsite lease)
site sales)

To: All Concerned Persons

1. On October 17, 2013, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-173 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1783 of the 2013 Montana Administrative Register, Issue Number 19.

2. The department has adopted the above-stated rules as proposed: New Rule I (36.25.701), II (36.25.702), III (36.25.703), IV (36.25.704), V (36.25.705), VI (36.25.706), VII (36.25.707), VIII (36.25.708).

3. The department has amended ARM 36.25.128 as proposed.

4. The department has repealed ARM 36.25.131 as proposed.

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

COMMENT 1:

Commenter supports the rules as proposed and feels they implement the legislation as it was written. Commenter also supports the sale program because it is voluntary and not mandatory.

RESPONSE 1:

DNRC agrees the rules as proposed implement the intent of the statute enacted by Chapter 422 of the 2013 Montana Session Laws.

COMMENT 2:

DNRC may wish to consider notification or provisions related to living with wildlife, weed management, and fuels reduction.

RESPONSE 2:

DNRC will include living with wildlife, weed management, and fuels reduction information in its *General Terms and Conditions of Sale* information for cabin and home site sales.

COMMENT 3:

Existing DNRC rules require notifying potential buyers that a property is within a designated floodplain or floodway.

RESPONSE 3:

DNRC will notify all potential buyers if a property, or portion of it, is within a designated floodplain or floodway.

COMMENT 4:

DNRC should notify potential buyers that a lakefront property may be subject to Missoula County Shoreline Regulations.

RESPONSE 4:

DNRC will notify all potential buyers of a lakefront property in Missoula County that the property may be subject to Missoula County Shoreline Regulations.

COMMENT 5:

Commenter expressed concern over clarifying access issues, access agreements and maintenance, and maintaining access to other public or state lands, or public waters.

RESPONSE 5:

DNRC will convey access it can legally convey to purchasers of cabin and home sites. DNRC will also reserve access to other cabin and home sites or public lands when necessary.

COMMENT 6:

Commenter expressed concern regarding the water quality in the Seeley Lake area. Some existing septic systems may not meet current regulations or adequately protect water quality. The quicker the state sells these leases, the better for the water quality in the area.

RESPONSE 6:

DNRC will process and sell cabin and home sites as quickly as available funding allows.

COMMENT 7:

Several potential properties for sale are within Missoula County Zoning Districts.

RESPONSE 7:

DNRC will inform all potential buyers when it is aware of properties within zoning districts.

COMMENT 8:

Selling the cabin and home sites is not the highest and best use of the state land. Setting a reasonable market lease rate that keeps most of the cabin and home site lots continuously leased is a better option.

RESPONSE 8:

Cabin and home site lease rates are outside of the scope of this rulemaking.

COMMENT 9:

The proposed pilot sale program should focus on selling vacant, previously leased lots. These lots are currently not generating any revenue for trust beneficiaries.

RESPONSE 9:

Active leases make up 89 percent of all cabin and home sites. The DNRC feels that active lessees should be prioritized in the pilot program. When sufficient funding is received to process more cabin and home site sales, vacant previously leased lots may be included.

COMMENT 10:

The interest earned on sale proceeds will not replace income generated by annual lease fees.

RESPONSE 10:

Sale proceeds will be placed in the land banking trust fund (ARM 36.25.811) and used to purchase replacement lands that generate equal or greater net revenue for trust beneficiaries.

COMMENT 11:

The \$100 nomination fee should be refundable; it is unfair to those whose lots are not selected to make multiple \$100 nonrefundable payments.

RESPONSE 11:

The sale nomination fee is nonrefundable. If a lot is not selected in a given year, the nominator will not have to pay an additional nomination fee in subsequent years to have the lot considered as a potential sale parcel.

COMMENT 12:

The state should give leaseholders who have had leases in their family for 50 or more years the option to solely purchase their cabin and home site without having to bid at a public auction.

RESPONSE 12:

DNRC is required by the Enabling Act and the Montana Constitution to use a public sale process (auction) to sell fee title to any state trust lands. A closed sale process is not a lawful option and would not be in the best interests of affected trust beneficiaries. As a fiduciary, the DNRC must act with undivided loyalty to the best financial interests of the trust beneficiaries.

COMMENT 13:

Commenter expressed concern that the current auction process leaves the current leaseholder open to predatory speculation. The auction process may create hostile

relationships in communities where cabin and home sites are sold. Current lessees should be given the ability to purchase the cabin and home site at the appraised price. The auction process may drive the price of the cabin and home site higher than the lessee's ability to pay.

RESPONSE 13:

See Response 12.

COMMENT 14:

Commenter expressed concern that the potential 20-year timeframe to offer all cabin and home sites for sale was extremely burdensome. Leaseholders should be given the option to pay processing costs to facilitate more cabin and home site sales. Once the pilot program is implemented and working, DNRC needs to sell off more than 40 sites per year. There should not be a cap on the amount of sites offered in a single year. This should be completely at the lessee's discretion.

RESPONSE 14:

The number of sites processed per year will be dependent on the funding DNRC receives to prepare and process cabin and home site sales and the number of sales that can be made within a given neighborhood without negatively impacting the market for cabin and home sites. The number of sales processed in any year will be under the Land Board's authority and direction. Sales will be consistent with the board's constitutional fiduciary duty of attaining full market value for lands sold.

COMMENT 15:

There is no opportunity to set a price higher than appraised value on the improvements.

RESPONSE 15:

Lessees have the opportunity for an informal administrative hearing before DNRC to provide evidence of a higher value for the improvements. DNRC will present its findings and conclusions along with the recommended value of the improvements to the Land Board.

COMMENT 16:

The state should split processing costs. It is unfair to place that burden entirely on the leaseholder.

RESPONSE 16:

DNRC will be paying for any needed surveys and the portion of the appraisal cost attributable to determining the market value of the cabin and home site. Under the existing Land Banking program rules (see ARM Title 36, chapter 25, subchapter 8), those fees are paid by the lessee who nominates the parcel for sale. DNRC also does not charge for administrative costs for work done by DNRC staff.

COMMENT 17:

As proposed, the sale program appears to be clumsy, slow, and difficult to navigate. It should be quick, simple, and easy to undertake.

RESPONSE 17:

The proposed sale program timeline accounts for: three approvals from the Land Board; an appraisal bidding and completion process; and advertising requirements in statute. DNRC will expedite the process whenever possible. Based on experience with land banking sales, the projected timeline for the cabin and home site sale process is reasonable and necessary to meet statutory and rule requirements.

COMMENT 18:

Commenter asked if the trial period will last through 2014 and gear up fully in 2015. Commenter asked if DNRC plans to fully implement the program in 2015 with a goal of 40 sale properties.

RESPONSE 18:

The number of sites processed per year for sale will be dependent on: funding DNRC receives to prepare and process cabin and home site sales; and the number of sales that can be made within a given neighborhood without negatively impacting the market for cabin and home sites. The number of sales processed in any year will be under Land Board authority and direction and will be consistent with the board's constitutional fiduciary duty of attaining full market value for lands sold.

COMMENT 19:

Commenter asked if the proposed Governor's Budget for the 2015 Legislative Session will include funding for these sales.

RESPONSE 19:

Details of the Governor's budgeting process are outside of the scope of this rulemaking.

COMMENT 20:

Once the pilot program is over, commenter asked if there will be prioritization or if there will be equal treatment for both current lessees and improvement owners who have nominated their properties. Commenter asked if DNRC intends to have any preference.

RESPONSE 20:

Once the pilot program is over, lessee and improvement owner nominations that meet preliminary criteria will be included for random selection in the sales program. The duration of the pilot program will be dependent on Land Board oversight and the funding DNRC receives to prepare and process cabin and home site sales.

COMMENT 21:

The treatment of owner improvements upon a cancelled lease (versus a current lessee) is unfair. Improvement owners should be given the same rights as any lessee in being able to match the highest bid for the cabin and home site.

RESPONSE 21:

The ability to match the high bid at an auction is only afforded to lessees, per 77-2-324, MCA.

COMMENT 22:

Real estate brokers in different counties could provide a great deal of assistance and marketing experience and may be an excellent way to eliminate funding issues associated with the selling of these parcels.

RESPONSE 22:

DNRC believes involving real estate brokers and paying real estate sales commissions would add additional, unnecessary cost associated with selling these parcels.

COMMENT 23:

Cabin and home site land would be better cared for environmentally if it was privately owned. "Owners would be able to rationalize and finance home and land improvements by being able to borrow from banks or in knowing that said improvements would be advantageous to them in future sales/or in keeping the values of their saleable property in good condition."

RESPONSE 23:

DNRC cannot speculate on how private ownership would affect the environmental care of cabin and home sites. DNRC assumes that current conditions and uses would continue and any change in use would require local regulatory approval, similar to current conditions.

COMMENT 24:

Commenter asked if the identity of other qualified bidders would be public knowledge.

RESPONSE 24:

After the deadline for submitting a bid deposit on a sale parcel, lessees or improvement owners may contact the DNRC and inquire about other submitted bid deposits. All bidders will have to attend—or be represented at—the auction. Only oral bids submitted by a qualified bidder will be accepted at the auction.

COMMENT 25:

Commenter asked if lessees will be responsible to "show" the cabin or home site and grant access for inspections and viewing appointments for prospective bidders.

RESPONSE 25:

DNRC will further develop sale procedures where there will be a requirement to allow prospective bidders to view the property without overly burdening the lessee.

COMMENT 26:

Commenter asked under what conditions the board or DNRC may nominate cabin and home sites for sale.

RESPONSE 26:

Pursuant to 77-2-318, MCA, sales of existing cabin or home sites could be initiated by the lessee with the approval of the board. Under the adopted rules, DNRC contemplates only nominating unleased cabin and home sites for sale. The Land Board retains the constitutional authority to determine whether any tract of trust land should be sold. The sale program under 77-2-318, MCA, is voluntary

COMMENT 27:

Selling cabin and home sites to lessees will improve the economy and tax base.

RESPONSE 27:

Cabin and home sites that are sold into private ownership will no longer be tax exempt. They will be taxed as assessed by the Montana Department of Revenue.

COMMENT 28:

Commenter asked why proceeds above minimum bid are not allocated pro rata between the land and the improvements. Commenter said it seemed unfair that all amounts over the appraised value are assigned to the land value.

RESPONSE 28:

DNRC only owns the cabin and home site and has authority to sell only the cabin and home site. DNRC will not be selling the improvements at the auction and bidding will be for the land only. However, it shall be a condition of any sale that the purchaser separately purchase the improvements at their appraised value. Any value received over the minimum bid is attributable to the land only.

COMMENT 29:

Commenter asked why bidding does not start at \$10 per acre since the Enabling Act established that as a minimum value.

RESPONSE 29:

The Enabling Act states that any lands disposed of shall not be sold for a price less than ten dollars an acre. The Montana Constitution states: "No such land or any estate or interest therein shall ever be disposed of except in pursuance of general laws providing for such disposition, or until the full market value of the estate or interest disposed of, to be ascertained in such manner as may be provided by law, has been paid or safely secured to the state." The Land Board sets the minimum bid for a sale parcel after the market value has been established through an appraisal.

COMMENT 30:

There should be a way to allow lessees a limited window of opportunity to offer fair market value for their leases, after which it goes on the market for competitive bid.

RESPONSE 30:

See Response 12.

COMMENT 31:

Commenter asked if they have the ability to propose a land exchange for a cabin or home site.

RESPONSE 31:

Yes, the proposed land exchange would have to meet or exceed the land exchange criteria in the Land Board's *Land Exchange Policy* (revised December 2004). The *Land Exchange Policy* can be found on the DNRC web site at <http://dnrc.mt.gov/Trust/REMB/Exchange/LandExchangePolicy.pdf>.

COMMENT 32:

Commenter asked if the proposed rules allow those lessees whose leases have been abandoned or canceled to participate in the sale program.

RESPONSE 32:

77-2-318, MCA, states that at the request of a lessee or improvement owner the Land Board will make cabin and home sites available for sale, if the sale is consistent with the board's constitutional fiduciary duty of attaining full market value and the sale complies with the provisions of Title 77, chapter 2, part 3, MCA, and if the sale is approved by the board. This language would indicate that owners of improvements on cancelled or terminated lease sites may nominate those sites for sale.

COMMENT 33:

If the state puts up an abandoned or cancelled lease property for sale, commenter asked if the buyer will have to accept "fair market value" for the improvements, or if those values are negotiable.

RESPONSE 33:

The buyer will have to accept "fair market value" for the improvements, as determined by appraisal and set by the Land Board on all sales of cabin and home sites. The improvement owner has the option of accepting less than the "fair market value" for the improvements set by the Land Board in order to facilitate a sale.

COMMENT 34:

High bidders for lucrative state leases on waterfront properties who outbid lessees can force lessees off the property then give them fair market value for their improvements. Commenter asked why lessees cannot secure more than fair market value for their improvements since the state can secure more than fair market value for its land.

RESPONSE 34:

See Response 12. If the full market value is more than the minimum bid set by the Land Board based on the appraisal, the value may be bid up. The purchaser (if not

the lessee) will also have to pay the owner of the improvements the value of those improvements.

COMMENT 35:

The bid process may very well discourage lessees of lucrative properties who fear a competitive bid which they cannot afford to match. The rules thwart the intent of Chapter 422 of the 2013 Montana Session Laws which was to eventually get the state out of the cabin leasing business.

RESPONSE 35:

Purchasers must pay full market value set by the auction process. The purpose of Chapter 422 of the 2013 Montana Session Laws is to facilitate the sale of cabin site properties if it is consistent with the best interests of the affected trust beneficiaries.

COMMENT 36:

What is the environmental review referred to in the proposed rules since these sales are exempt from the Montana Environmental Policy Act (MEPA)?

RESPONSE 36:

This would be any other type of environmental review needed to allow the sale process to move forward (e.g., Phase 1 Environmental Site Assessment).

COMMENT 37:

New Rule V(2) states DNRC reserves the right to prioritize activities and determine the number of transactions processed related to the sale of cabin activities and determine the number of transaction processed related to the sale. Commenter asked what those transactions would be.

RESPONSE 37:

Prioritization of sale activities would be dependent on funding and available staff to process sales. Other trust land project staff may be allocated to work on the program and the number of sales that can be made within a given neighborhood without negatively impacting the market for cabin and home sites. The number of sales processed in any year will be under Land Board authority and direction; and, will be consistent with the board's constitutional fiduciary duty of attaining full market value for lands sold.

COMMENT 38:

DNRC should address the question of whether or not land developers and realtors can purchase leaseholds. Commenter believes these entities and their agents should be specifically prohibited from bidding on lucrative leaseholds.

RESPONSE 38:

The sale process required by law is an open public auction. Any person who timely submits an *Offer to Purchase and Bid Deposit* will be allowed to bid on the sale parcels.

COMMENT 39:

There appears to be no way a leaseholder can purchase his leasehold if it is valued beyond his financial means. Commenter asked if the state would be willing to "back" the leaseholder and offer security to a private lender so that a leaseholder could purchase his leasehold.

RESPONSE 39:

Chapter 422 of the 2013 Montana Session Laws does not require DNRC to offer financing for cabin and home site sales.

COMMENT 40:

Lease properties should be well-marked and advertised for sale so potential bidders can see and evaluate the properties.

RESPONSE 40:

DNRC will ensure sale property boundaries are well marked and will develop effective marketing materials to generate interest in cabin and home site sales.

COMMENT 41:

According to the proposed rules, preliminary sale criteria include "the extent of infrastructure." Commenter asked if DNRC and the Land Board will disapprove a sale if there is no infrastructure to the property (e.g., sewer, water, and power). The lack of infrastructure did not stop the state from leasing the property in the first place, so it should not stop it from selling the lease. Infrastructure criteria should be deleted. Including it as sale criteria discriminates against a class of leaseholders.

RESPONSE 41:

The extent and placement of infrastructure may require additional survey work or agreements between lessees on shared or encroaching infrastructure. Lack of infrastructure alone will not disqualify a parcel from being considered for sale.

COMMENT 42:

Commenter asked why "John Doe citizen" cannot petition to buy an abandoned or cancelled leasehold. As it appears now in the proposed rules, only DNRC or Land Board can nominate parcels for sale.

RESPONSE 42:

A citizen who is not a lessee or improvement owner may request that DNRC nominate unleased cabin and home sites.

/s/ John E. Tubbs

JOHN E. TUBBS

Director

Natural Resources and Conservation

/s/ Tommy Butler

TOMMY BUTLER

Rule Reviewer

Certified to the Secretary of State December 16, 2013

24-12/26/13

Montana Administrative Register

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

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 37.87.1202, 37.87.1210,) REPEAL
37.87.1214, 37.87.1217, and)
37.87.1223 and the repeal of ARM)
37.87.1222, pertaining to psychiatric)
residential treatment facility (PRTF))
services)

TO: All Concerned Persons

1. On October 31, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-653 pertaining to the public hearing on the proposed amendment and repeal of the above-stated rules at page 1948 of the 2013 Montana Administrative Register, Issue Number 20.

2. The department has amended ARM 37.87.1202, 37.87.1210, and 37.87.1214 as proposed. The department has repealed ARM 37.87.1222 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:

37.87.1217 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, TREATMENT REQUIREMENTS (1) through (5) remain as proposed.

(6) The plan of care and discharge plan for the youth must be reviewed at least every 30 days at the multidisciplinary treatment team meeting, and more frequently if there is a significant change in the condition of the youth. The parent or legal representative of the youth must be invited to participate in these meetings, and given adequate notice to participate. Adequate notice means generally a week unless the condition of the youth dictates otherwise. At a minimum the following must be discussed, if applicable to the needs of the youth:

(a) through (10) remain as proposed.

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

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

37.87.1223 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITY (PRTF) SERVICES, REIMBURSEMENT (1) through (7) remain as proposed.

(8) The bundled per diem rate for out-of-state PRTFs does not include the following services, which are separately reimbursable by the Medicaid program for enrolled providers:

(a) remains as proposed.

(b) ~~adult mental health center evaluations~~ a clinical intake assessment by a licensed mental health center, with an endorsement to provide adult services, for transition age youth 17 to 18, to determine whether or not they have a severe and disabling mental illness and if they qualify for adult mental health services ~~and have a severe and disabling mental illness;~~ and

(c) through (12) remain as proposed.

(13) Notice of the admission and discharge dates for the youth must be submitted to the department or its designee the day of admission or discharge. The department may impose a ~~\$200~~ \$100 charge against the facility for each instance where the department does not receive timely notification.

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

IMP: 53-2-201, 53-6-101, 53-6-111, 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: One commenter expressed concern regarding the removal of care coordination as a reimbursed ancillary service. The commenter stated they expect that there will be more out-of-state referrals based on this decision. The commenter also stated that they did, in fact, utilize care coordination so questioned the department's reasoning for removing the service option.

RESPONSE #1: The department is currently seeking federal guidance regarding this issue. In order to provide accurate and reliable information the department will further address this issue once a federal response has been received.

COMMENT #2: Several commenters requested the department to reconsider the decision to not require assessment or treatment services for substance use disorder. The commenters stated it is counter to efforts to expand the availability of co-occurring mental health and substance use disorder services. Furthermore, the commenters stated it was an extremely helpful treatment.

RESPONSE #2: Providing substance disorder screening, assessment, and treatment is optional and not mandatory. The department took the opportunity to reimburse psychiatric residential treatment facilities (PRTFs) for chemical dependency assessment and treatment services when PRTFs were responsible to reimburse for ancillary services youth received while in their facilities. The Children's Mental Health Bureau (CMHB) does not reimburse for substance use disorder treatment; Addictive and Mental Disorders Division (AMDD) does when the provider is state approved and under contract.

COMMENT #3: A few commenters stated the requirement of using Montana - Child and Adolescent Needs and Strengths (MT-CANS) is an additional and unfunded requirement and places a burden on current staff.

RESPONSE #3: Requiring the use of a department-approved functional assessment is not new; the requirement was adopted in administrative rule February 20, 2013, with an effective date of July 1, 2013, to allow time for implementation of the assessment. The department determined that after initial staff training, the assessments take a minimal amount of time to complete. Also, the department has developed an electronic Montana CANS System (MCS) that is designed for ease of access, to collect MT-CANS assessments, and to return the resulting MT-CANS data back to the providers which helps to inform treatment decision planning.

COMMENT #4: One commenter stated that in ARM 37.87.1217(6)(f), the discussion areas listed, while relevant, are too inclusive as they may or may not apply to the individual youth.

RESPONSE #4: The department agrees with the commenter. The list included in ARM 37.87.1217(6)(f) may not apply to the condition of all youth. Therefore, the department will add language to allow for more flexibility to address the individualized need of each youth.

COMMENT #5: One commenter requested clarification regarding ARM 37.87.1223(5) and (6) regarding the direct care wage. The commenter specifically asked if the per diem rate that went into effect July 1, 2013, will now be considered to include direct care wages.

RESPONSE #5: The July 1, 2013, PRTF per diem rate does not include direct care wages.

COMMENT #6: One commenter asked if in ARM 37.87.1223(6)(d)(ii), the PRTF physician would order the services provided or if they would be required to direct the actual service. Additionally, the commenter would like to know if in (6)(d)(iii) the provider would be required to enter into an arrangement with a qualified Medicaid provider or if the Medicaid provider would provide the service and charge Montana Medicaid directly for the services.

RESPONSE #6: Yes, the PRTF physician orders the ancillary service provided but is not required to direct the actual service. Yes, the Montana Medicaid qualified provider provides the ancillary service and bills the Montana Medicaid Program directly for the service.

COMMENT #7: One commenter asked the department how the direct care wage will be added and to explain the options, "through contract with the Department or in the bundled per diem rate."

RESPONSE #7: The proposed language in ARM 37.87.1223(5)(a) is not new; it was moved when ARM 37.87.1222 was repealed. The rule was previously changed in anticipation of adding the direct care wage funds to the PRTF bundled per diem rate. The direct care wage add-on is currently reimbursed through a contract with the department. Providers report to the department, on a quarterly basis, the

number of Montana Medicaid youth served and their current number of direct care staff.

The department has not made a final decision on whether or not to add the direct care wage add-on to the bundled PRTF per diem rate and specific methodology to do so has not been established.

COMMENT #8: A few commenters requested the department allow in-training practitioners with clinical supervision be added as allowable providers within the bundled per diem rate.

RESPONSE #8: Services provided by licensed psychologists, clinical social workers, and professional counselors are included in both the in-state and out-of-state PRTF bundled per diem rates. This rule does not exclude PRTFs from employing in-training practitioners. The intent of the rule is that the licensed professionals listed cannot bill for their professional services separately, they are built into the bundled per diem rate.

COMMENT #9: A few commenters requested that targeted case management (TCM) also be allowed for discharge planning from an in-state PRTF. A few commenters stated that due to the demographics of Montana, some in-state PRTFs could be further from the home of the youth than an out-of-state PRTF.

RESPONSE #9: The department is currently seeking federal guidance regarding this issue. In order to provide accurate and reliable information the department will further address this issue once a federal response has been received.

COMMENT #10: A few commenters stated in ARM 37.87.1223(13) that they prefer that penalties not be charged and that improving the process and addressing the problems is a better solution. However, the commenter also stated they appreciate that the department lowered the fine down from the original proposed amount of \$500.

RESPONSE #10: It is not the department's intent to create an adversarial relationship with providers. The department will maintain the current \$100 charge while researching and considering other solutions. However, due to the consequences when this requirement is not adhered to, the department needs to stress the importance of submitting timely and accurate admission and discharge dates to the department or their designee.

COMMENT #11: One commenter noted that it may be infeasible for a licensed mental health center to complete a clinical intake assessment, especially on out-of-state youth, due to the fact it must be completed in person. The commenter also offered alternative terminology from "adult mental health center" to "licensed mental health center" and "clinical intake assessment" rather than "evaluation" in order to remain consistent with the terminology currently used in adult mental health.

RESPONSE #11: The department agrees with the commenter regarding the terminology and will make the suggested changes with the addition that the licensed mental health center must be endorsed to provide adult services.

The department understands the youth must be present in order to complete the clinical intake assessment and with out-of-state youth that may not always be an option. There are options available to provide this service to youth in both in-state and out-of-state PRTFs. Per ARM 37.88.605(6), services through interactive video are considered face-to-face and are reimbursed in the same fashion. Also, some youth do come back in-state for therapeutic home visits at which time it may be feasible to schedule an in-person assessment. Another option would be for the clinician to go to the PRTF to administer the assessment when it is feasible to do so.

COMMENT #12: One commenter requested clarification regarding how the CANS assessments should be administered now that the electronic Montana CANS System (MCS) is operational. The commenter articulated that using the MCS would provide valuable opportunity to collect and assess information that would be beneficial for both the department and providers.

RESPONSE #12: The department agrees with the commenter; however, rather than adding this requirement into this rule set, the department will consider adding the use of the MCS to future rulemaking as it applies to more than just the PRTF rules.

5. The department intends to adopt these rule amendments and repeal effective December 31, 2013, except for ARM 37.87.1223(5)(a) which is retroactively effective to July 1, 2013. A retroactive application of (5)(a) does not result in a negative impact to any affected party.

/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 December 16, 2013

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 37.81.304 and 37.81.342)
pertaining to maximum Big Sky Rx)
premium change)

TO: All Concerned Persons

1. On November 14, 2013, the Department of Public Health and Human Services published MAR Notice No. 37-654 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2036 of the 2013 Montana Administrative Register, Issue Number 21.

2. The department has amended ARM 37.81.304 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:

37.81.342 BIG SKY RX PREMIUM PAYMENTS (1) Monthly premium payments will be made to:

(a) to an insurer that has contracted with the department;

(b) directly to clients if:

(i) their monthly premium is deducted from their Social Security check;

(ii) they enroll in a PDP provided by an insurer that does not contract with the department; or

(iii) the client chooses to be paid directly;

~~(c)~~ (2) ~~Direct~~ monthly premium payments to enrollees will be made:

(i) through (B) remain as proposed.

AUTH: 53-2-201, 53-6-1004, MCA

IMP: 53-6-1001, 53-6-1004, 53-6-1005, 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 Office of the Secretary of State noted that the language in ARM 37.81.342 needed to be corrected.

RESPONSE #1: The department has corrected the language in this rule.

5. These rule amendments are effective January 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 December 16, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.21.116, 42.21.158, and)
42.21.162 regarding personal property)
valuation)

TO: All Concerned Persons

1. On September 5, 2013, the department published MAR Notice Number 42-2-895 regarding the proposed amendment of the above-stated rules at page 1591 of the 2013 Montana Administrative Register, Issue Number 17.

2. On September 26, 2013, a public hearing was held to consider the proposed amendments. Montana Chamber of Commerce representative Michael Green appeared and testified at the hearing and subsequently submitted written comments. The oral and written comments received are summarized as follows, along with the department's responses:

COMMENT NO. 1: Mr. Green commented that the Chamber appreciates the department's undertaking of the rulemaking and that the substantive part, ARM 42.21.158(6), seems to carry out the intent of Senate Bill 96. He further commented that they appreciate the department's efforts and clarifying in rule the breakdown between the \$100,000 exemption and the two tax rates.

Mr. Green stated that the Chamber appreciates the department's efforts to provide taxpayers with additional time and for alleviating some of the reporting requirements on new businesses that fall within the new exemption amount.

RESPONSE NO. 1: The department appreciates the Chamber's interest in this rulemaking action and thanks Mr. Green for appearing to testify.

COMMENT NO. 2: Mr. Green asked for an explanation on the rationale behind the inclusion of new (11) in ARM 42.21.158, regarding the reporting of installed costs. He commented that the term "installed costs" is not necessarily a term that he would affiliate with intangible personal property and requested that the department clarify or modify the language that's included there to the extent they can.

He also asked whether the department has reconsidered inclusion of this and asked the department to strike this portion of the amended rule in light of the recent Verizon Wireless decision from the Montana Supreme Court regarding the accounting and the exemptions for intangible personal property.

RESPONSE NO. 2: Department staff responded to Mr. Green at the hearing. Sherri Diemert, Management Analyst, Property Assessment Division, clarified that this is not new language, but rather a relocation of the language to another section within the rule. New (11) was previously (6), and the affiliated entities language is being relocated from (7). Both were just part of the reorganization of the rule.

The department is further amending ARM 42.21.158(11) to reflect the Verizon Wireless decision.

COMMENT NO. 3: Mr. Green stated that the Chamber requests the department eliminate the provisions of new (2), (3), and (4) of ARM 42.21.158. He stated that while originally adopted in 2011, the affiliate rules embodied in these sections exceed the authority granted by the statute and directly contradict the language of 15-6-138(4), MCA. The Chamber is concerned that the current proposed language will deny or improperly reduce the new statutory exemption for a wide class of taxpayers.

Mr. Green further commented that 15-6-138(4), MCA, expressly indicates that the first \$100,000 of property of "a person or business entity" is exempt. The tax rate brackets above the exemption incorporate this language because they specifically refer to taxable values in excess of the exemption in (4). See 15-6-138(3)(a), MCA. This language does not imply the concept of affiliate ownership and does not authorize the department's indirect ownership rules. As a result, the Chamber requests the department eliminate these rules to provide taxpayers the full benefit of the exemption and tiered rates the Legislature created.

RESPONSE NO. 3: The department appreciates Mr. Green's comments. The department respectfully declines, however, to eliminate the provisions of (2), (3), and (4) of ARM 42.21.158. Section 15-6-122, MCA, provides for the taxation of business personal property; specifically, personal property that belongs to, is claimed by, is in the possession of, controlled by, or managed by a sole proprietor, firm, association, partnership, business, corporation, or limited liability company.

The amount of the exemption was changed by the 2013 Legislature, but the application of the affiliate rules was not changed and was in place prior to the legislative changes. The language in these sections is the result of restructuring and renumbering existing rule content. It is clear from the legislative history that there was no intent to change the reporting requirements. The provisions of (2), (3), and (4) of ARM 42-2-158 are clarification of the reporting requirements that are currently in place.

Further, 15-1-201, MCA, authorizes the department to make rules to administer the tax laws. ARM 42.21.158(2) through (4) explain that personal property is taxable to a sole proprietor, firm, association, partnership, business, corporation, or limited liability company that owns, claims, possesses, controls, or manages more than half of the value of the personal property.

3. To comply with 2-4-305(3), MCA, the department amends ARM 42.21.158(2) and 42.21.162(2) to strike the general chapter and section statute references and add the individual statutes as implementing citations instead; and as a result of the comments received, amends ARM 42.21.158(11) as follows:

42.21.158 PERSONAL PROPERTY REPORTING REQUIREMENTS

(1) remains as proposed.

(2) For the purposes of this rule, the statewide aggregate taxable market value of a taxpayer's personal property includes all property owned, claimed,

possessed, controlled, or managed by an individual or business entity, either directly or indirectly through an affiliated entity or family member, unless that property is specifically exempted in Title 15, chapter 6, part 2, of MCA by law.

(3) through (10) remain as proposed.

(11) Industrial and commercial property taxpayers shall provide documentation of the installed costs of intangible personal property included on the taxpayer's accounting records, or provide other alternative methodologies or information regarding market value for consideration by the department.

(12) remains as proposed.

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

IMP: 15-1-121, 15-1-303, 15-6-138, ~~Title 15, chapter 6, part 2~~ 15-6-201, 15-6-202, 15-6-203, 15-6-206, 15-6-213, 15-6-215, 15-6-217, 15-6-218, 15-6-219, 15-6-220, 15-6-225, 15-6-228, 15-8-104, 15-8-301, 15-8-303, 15-8-309, 15-9-101, 15-24-902, 15-24-903, 15-24-904, 15-24-905, 15-24-3001, MCA

42.21.162 PERSONAL PROPERTY TAXATION DATES (1) remains as proposed.

(2) ~~In order to obtain an exemption for personal property, other than class eight property that is automatically exempt under Title 15, chapter 6, part 2, MCA,~~ an all cases in which an application for personal property tax is required by law, the application for exemption must be filed before March 1 of the year for which the exemption is sought. If the applicant acquires the personal property after January 1, they must submit an application for exemption:

(a) by March 1; or

(b) within 30 days of acquisition of a motor vehicle.

(3) through (7) remain as proposed.

AUTH: 15-1-201, MCA

IMP: ~~Title 15, chapter 6, part 2~~ 15-6-201, 15-6-202, 15-6-211, 15-6-229, 15-6-230, 15-8-201, 15-16-613, 15-24-301, 15-24-303, 15-24-3001, MCA

4. The department amends ARM 42.21.116 as proposed.

5. An electronic copy of this notice is available on the department's web site, revenue.mt.gov. In the left hand column under Quick Links, select "Laws and Rules," then "Rules" and then "Adoption Notices." The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State December 16, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.11.245 relating to liquor)
advertising)

TO: All Concerned Persons

1. On November 14, 2013, the department published MAR Notice Number 42-2-899 regarding the proposed amendment of the above-stated rule at page 2060 of the 2013 Montana Administrative Register, Issue Number 21.

2. No comments were received. Therefore, the department amends the rule as proposed.

3. An electronic copy of this notice is available on the department's web site, revenue.mt.gov. In the left hand column under Quick Links, select "Laws and Rules," then "Rules" and then "Adoption Notices." The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State December 16, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.18.124 pertaining to)
clarification of valuation periods)

TO: All Concerned Persons

1. On November 14, 2013, the department published MAR Notice Number 42-2-900 regarding the proposed amendment of the above-stated rule at page 2062 of the 2013 Montana Administrative Register, Issue Number 21.

2. A public hearing was held on December 5, 2013, to consider the proposed amendment. No one appeared at the hearing to testify and no written comments were received. Therefore, the department amends ARM 42.18.124 as proposed.

3. An electronic copy of this notice is available on the department's web site, revenue.mt.gov. In the left hand column under Quick Links, select "Laws and Rules," then "Rules" and then "Adoption Notices." The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State December 16, 2013

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 42.20.102 pertaining to)
applications for property tax)
exemptions)

TO: All Concerned Persons

1. On November 14, 2013, the department published MAR Notice Number 42-2-901 regarding the proposed amendment of the above-stated rule at page 2064 of the 2013 Montana Administrative Register, Issue Number 21.

2. A public hearing was held on December 5, 2013, to consider the proposed amendment. No one testified and no written comments were received. Therefore, the department amends ARM 42.20.102 as proposed.

3. An electronic copy of this notice is available on the department's web site, revenue.mt.gov. In the left hand column under Quick Links, select "Laws and Rules," then "Rules" and then "Adoption Notices." The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Laurie Logan
LAURIE LOGAN
Rule Reviewer

/s/ Mike Kadas
MIKE KADAS
Director of Revenue

Certified to Secretary of State December 16, 2013

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

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

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

Use of the Administrative Rules of Montana (ARM):

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

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2013. This table includes those rules adopted during the period October 1, 2013, through December 31, 2013, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2013, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2013 Montana Administrative Register.

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

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in November 2013 appear. Vacancies scheduled to appear from January 1, 2014 through March 31, 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 December 1, 2013.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Barbers and Cosmetologists (Labor and Industry)			
Mrs. Connie Leistiko Kalispell	Governor	Ausk Crisafulli	11/1/2013 10/1/2018
Qualifications (if required): General Public Representative			
Mr. Wendell Petersen Missoula	Governor	reappointed	11/1/2013 10/1/2018
Qualifications (if required): Cosmetologist			
Ms. Sherry Wieckowski Thompson Falls	Governor	reappointed	11/1/2013 10/1/2018
Qualifications (if required): Barber			
Board of Massage Therapy (Labor and Industry)			
Mrs. Anne Gergen Broadus	Governor	Kimmet	11/1/2013 5/6/2017
Qualifications (if required): Massage Therapist			
Board of Physical Therapy Examiners (Labor & Industry)			
Ms. Susan Michels Great Falls	Governor	Peterson Smith	11/1/2013 7/1/2016
Qualifications (if required): Physical Therapist			
Board of Public Accountants (Labor & Industry)			
Ms. Linda Harris Absarokee	Governor	reappointed	11/1/2013 7/1/2017
Qualifications (if required): Public Accountant			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Public Accountants (Labor & Industry) cont.			
Mr. Daniel Vuckovich Great Falls	Governor	Reisig	11/1/2013 7/1/2017
Qualifications (if required): Public Accountant			
Board of Sanitarians (Governor)			
Mr. James Zabrocki Miles City	Governor	reappointed	11/29/2013 7/1/2016
Qualifications (if required): Sanitarian			
Education Commission of the States (Governor)			
Ms. Elly Driggers Helena	Governor	McCulloch	11/29/2013 1/1/2017
Qualifications (if required): Educator Engaged in K-12 Education			
Ms. Carmen Taylor Polson	Governor	Karas	11/29/2013 1/1/2017
Qualifications (if required): Educator Engaged in Higher Education			
Mr. Mike Thiel Kalispell	Governor	Taylor	11/29/2013 1/1/2017
Qualifications (if required): Educator Engaged in K-12 Education			
Flathead Basin Commission (Governor)			
Mr. Chas Cartwright Columbia Falls	Governor	reappointed	11/29/2013 6/30/2017
Qualifications (if required): Public Representative			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Flathead Basin Commission (Governor) cont.			
Ms. Jan Metzmaker Whitefish Qualifications (if required): Public Representative	Governor	reappointed	11/29/2013 6/30/2017
Mr. Thompson Smith Charlo Qualifications (if required): Public Representative	Governor	reappointed	11/29/2013 6/30/2017
Governor's Healthier Task Force (Public Health and Human Services)			
Dr. Caitlin Hall Crow Agency Qualifications (if required): Tribal Health Programs	Governor	Not Listed	11/15/2013 10/25/2015
Dr. Roman Hendrickson Sheridan Qualifications (if required): Healthcare Providers	Governor	Not Listed	11/15/2013 10/25/2015
Mr. Clay Vincent Bozeman Qualifications (if required): Public Health Agency	Governor	Not Listed	11/15/2013 10/25/2015
Governor's Postsecondary Scholarship Advisory Council (Governor)			
Ms. Connie Wittak Flaxville Qualifications (if required): Experience in Education	Governor	reappointed	11/29/2013 7/1/2016

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Children's Trust Fund Board (Public Health and Human Services)			
Ms. Kristina Davis Great Falls	Governor	Hall-Munger	11/1/2013 1/1/2016
Qualifications (if required): General Public Representative			
Mrs. Clementine Lindley Billings	Governor	Stroh	11/1/2013 1/1/2015
Qualifications (if required): General Public Representative			
Mrs. Catherine Molloy Helena	Governor	Widmer	11/1/2013 1/1/2016
Qualifications (if required): General Public Representative			
Montana Council on Developmental Disabilities (Public Health and Human Services)			
Rep. Clarena M. Brockie Harlem	Governor	Furey	11/1/2013 1/1/2017
Qualifications (if required): Legislator			
Rep. Robyn Driscoll Billings	Governor	Williams	11/1/2013 1/1/2017
Qualifications (if required): Legislator			
Mrs. Shiree Lyons Great Falls	Governor	Wenaas	11/1/2013 1/1/2017
Qualifications (if required): Secondary Consumer			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Council on Developmental Disabilities (Public Health and Human Services) cont.			
Ms. Diana Tavary Helena	Governor	reappointed	11/1/2013 1/1/2017
Qualifications (if required): Advocacy Organization			
Montana Suicide Review Team (Public Health and Human Services)			
Sheriff Brian Gootkin Bozeman	Governor	Not Listed	11/15/2013 6/30/2016
Qualifications (if required): Law Enforcement Representative			
Ms. Stephanie Iron Shooter Billings	Governor	Not Listed	11/15/2013 6/30/2016
Qualifications (if required): Advocacy Organization			
Ms. Carol Josephson Elliston	Governor	Not Listed	11/15/2013 6/30/2016
Qualifications (if required): Licensed Clinical Social Worker			
Dr. Leonard Lantz Helena	Governor	Not Listed	11/15/2013 6/30/2016
Qualifications (if required): Psychiatrist			
Mr. Karl Rosston Helena	Governor	Not Listed	11/15/2013 6/30/2016
Qualifications (if required): Montana's Suicide Prevention Officer			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Suicide Review Team (Public Health and Human Services) cont.			
Mr. Bowman Smelko Helena Qualifications (if required): Psychologist	Governor	Not Listed	11/15/2013 6/30/2016
Ms. Vicki Waddington Sidney Qualifications (if required): Clergy	Governor	Not Listed	11/15/2013 6/30/2016
Private Land Public Wildlife Advisory Council (Governor)			
Mr. Dwayne Andrews Miles City Qualifications (if required): Sportsman	Governor	Nixon	11/29/2013 7/31/2015
Mr. George Bain Missoula Qualifications (if required): USFS Ex-Officio Member	Governor	Not Listed	11/29/2013 7/31/2015
Mr. Jack Billingsley Glasgow Qualifications (if required): Outfitter	Governor	Not Listed	11/29/2013 7/31/2015
Mr. Rod Bullis Helena Qualifications (if required): Landowner	Governor	Not Listed	11/29/2013 7/31/2015

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Private Land Public Wildlife Advisory Council (Governor) cont.			
Mr. Kevin Chappell Helena Qualifications (if required): DNRC Ex-Officio	Governor	Not Listed	11/29/2013 7/31/2015
Dr. Daniel R. Fiehrer Helena Qualifications (if required): Sportperson	Governor	Cohenour	11/29/2013 7/31/2015
Ms. Lisa Flowers Choteau Qualifications (if required): Sportperson	Governor	Not Listed	11/29/2013 7/31/2015
Ms. Kathy Hadley Deer Lodge Qualifications (if required): Sportperson	Governor	reappointed	11/29/2013 7/31/2015
Mr. Mike Henning Fairfield Qualifications (if required): Sportperson	Governor	Not Listed	11/29/2013 7/31/2015
Rep. Tom Jacobson Great Falls Qualifications (if required): Sportperson	Governor	Not Listed	11/29/2013 7/31/2015
Mr. Denley Loge St Regis Qualifications (if required): landowner	Governor	Not Listed	11/29/2013 7/31/2015

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Private Land Public Wildlife Advisory Council (Governor) cont.			
Sen. Jim Peterson Buffalo	Governor	Not Listed	11/29/2013 7/31/2015
Qualifications (if required): landowner			
Rep. Kendall Van Dyk Billings	Governor	Not Listed	11/29/2013 7/31/2015
Qualifications (if required): landowner			
Public Safety Officer Standards and Training Council (Governor)			
Ms. Tia Robbin Kalispell	Governor	Harper	11/29/2013 1/1/2015
Qualifications (if required): Public Representative			
Rangeland Resources Committee (Natural Resources and Conservation)			
Ms. Diane Ahlgren Winnett	Governor	reappointed	11/1/2013 1/1/2017
Qualifications (if required): Cattle Producer/Rancher Eastern Montana			
Mr. Les Gilman Alder	Governor	reappointed	11/1/2013 1/1/2017
Qualifications (if required): Cattle Producer/Rancher Western Montana			
Mr. Steve Hedstrom Raynesford	Governor	reappointed	11/1/2013 1/1/2017
Qualifications (if required): Cattle Producer/Rancher Central Montana			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Rangeland Resources Committee (Natural Resources and Conservation) cont.			
Mr. John Hollenback Gold Creek	Governor	reappointed	11/1/2013 1/1/2017
Qualifications (if required): Cattle Producer/Rancher West of the Divide			
Ms. Connie Iversen Culbertson	Governor	Hentges	11/1/2013 1/1/2017
Qualifications (if required): Cattle Producer/Rancher Northern Montana			
Mr. Noel Keogh Nye	Governor	Not Listed	11/1/2013 1/1/2017
Qualifications (if required): Cattle Producer/Rancher Southern Montana			
State Council on Educational Opportunity for Military Children (Military Affairs)			
Master Sergeant Benjamin Aylward Great Falls	Governor	Not Listed	11/15/2013 6/30/2015
Qualifications (if required): representative of Military Installation			
Major Renea Dorvall Fort Harrison	Governor	Not Listed	11/15/2013 6/30/2015
Qualifications (if required): Representative of the Executive Branch			
Superintendent Denise Juneau Helena	Governor	Not Listed	11/15/2013 6/30/2015
Qualifications (if required): Superintendent of Public Instruction			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
State Council on Educational Opportunity for Military Children (Military Affairs) cont.			
Ms. Tammy Lacey Fairfield	Governor	Not Listed	11/15/2013 6/30/2015
Qualifications (if required): Superintendent of a School District with a High Concentration of Military Children			
Colonel Harold Stearns Missoula	Governor	Not Listed	11/15/2013 6/30/2015
Qualifications (if required): Compact Commissioner and ex-officio member			
Statewide Interoperability Governing Board (Governor)			
Mr. Ron Baldwin Helena	Governor	Clark	11/29/2013 10/1/2015
Qualifications (if required): Chief Information Officer or Designee			
Commissioner Joe Briggs Great Falls	Governor	Not Listed	11/29/2013 10/1/2015
Qualifications (if required): Representative of the Montana Association of Counties			
Mr. Tim Burton Helena	Governor	Wilson	11/29/2013 10/1/2015
Qualifications (if required): Governor's Office Representative			
Sheriff Leo C. Dutton Helena	Governor	reappointed	11/29/2013 10/1/2015
Qualifications (if required): Representative of the Montana Sheriffs and Peace Officers Association			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Statewide Interoperability Governing Board (Governor) cont.			
Mr. Geoff Feiss Helena	Governor	Not Listed	11/29/2013 10/1/2015
Qualifications (if required): Representative of the Montana Telecommunications Industry			
Mr. Timothy C. Fox Helena	Governor	Bullock	11/29/2013 10/1/2015
Qualifications (if required): Attorney General or Designee			
Mr. Patrick Lonergan Bozeman	Governor	Not Listed	11/29/2013 10/1/2015
Qualifications (if required): Montana Fire Chiefs Association			
Ms. Bonnie Lorang Helena	Governor	Not Listed	11/29/2013 10/1/2015
Qualifications (if required): Representative of the Montana Telecommunications Industry			
Mr. Kevin Myhre Lewistown	Governor	Not Listed	11/29/2013 10/1/2015
Qualifications (if required): Representative of Montana League of Cities and Towns			
Ms. Jayne Rogers Great Falls	Governor	Not Listed	11/29/2013 10/1/2015
Qualifications (if required): Representative of the Montana EMS Association			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Statewide Interoperability Governing Board (Governor) cont.			
Director Jason Smith Helena Qualifications (if required): Director of Indian Affairs	Governor	Not Listed	11/29/2013 10/1/2015
Director Mike Tooley Helena Qualifications (if required): Transportation Director	Governor	Reardon	11/29/2013 10/1/2015
Water Pollution Control Advisory Council (Governor)			
Dr. Debra Bucklin Sanchez Helena Qualifications (if required): Licensed Professional Engineer with Experience in Sanitary Engineering	Governor	reappointed	11/29/2013 1/1/2017
Mr. Norris "Mack" Cole Forsyth Qualifications (if required): Irrigated Agriculture	Governor	Muggli	11/29/2013 1/1/2017
Ms. Barbara Hall Missoula Qualifications (if required): Conservation Organization	Governor	Fisher	11/29/2013 1/1/2017
Mr. Mitchell Leu Columbia Falls Qualifications (if required): Organic Waste Disposal Industry Representative	Governor	reappointed	11/29/2013 1/1/2017

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Water Pollution Control Advisory Council (Governor) cont.			
Ms. Stevie Newman Vaughn	Governor	reappointed	11/29/2013 1/1/2017
Qualifications (if required): Supervisor for a Soil and Water Conservation District			
Mr. Earl Salley Great Falls	Governor	reappointed	11/29/2013 1/1/2017
Qualifications (if required): Inorganic Waste Disposal Industry Representative			
Mr. Trevor Selch Helena	Governor	reappointed	11/29/2013 1/1/2017
Qualifications (if required): Fisheries Biologist			
Mr. Keith Smith Hamilton	Governor	reappointed	11/29/2013 1/1/2017
Qualifications (if required): Public Works Director			
Mr. Dudley L. Tyler Livingston	Governor	reappointed	11/29/2013 1/1/2017
Qualifications (if required): Realtor Representative			
Mr. Michael Wendland Rudyard	Governor	reappointed	11/29/2013 1/1/2017
Qualifications (if required): Production Agriculture			

BOARD AND COUNCIL APPOINTEES FROM NOVEMBER 2013

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Water Well Contractors Board (Governor)			
Mr. Pat Byrne Great Falls	Governor	reappointed	11/29/2013 1/1/2016
Qualifications (if required): Water Well Contractor			
Water and Waste Water Operators Advisory Council (Governor)			
Mr. Donald Coffman Harlem	Governor	reappointed	11/29/2013 10/1/2019
Qualifications (if required): Water Treatment Plant Operator			
Ms. Crystal Richards Billings	Governor	Schlotfeldt	11/29/2013 10/16/2017
Qualifications (if required): University Faculty			

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2014 THROUGH MARCH 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Architects and Landscape Architects (Labor and Industry) Mr. Bayliss Ward, Bozeman Qualifications (if required): registered architect with three years continuous practice	Governor	3/27/2014
Board of Chiropractors (Labor and Industry) Dr. Scott Hansing, Helena Qualifications (if required): practicing chiropractor with at least one year experience	Governor	1/1/2014
Board of Dentistry (Labor and Industry) Ms. Jennifer Porter, Bozeman Qualifications (if required): dental hygienist	Governor	3/29/2014
Dr. Dale R. Chamberlain, Lewistown Qualifications (if required): dentist	Governor	3/29/2014
Board of Horseracing (Livestock) Ms. Susan Egbert, Helena Qualifications (if required): resident of District 4	Governor	1/20/2014
Board of Pardons and Parole (Corrections) Mr. Darryl Dupuis, Polson Qualifications (if required): having education or experience in criminology	Governor	1/1/2014
Ms. Margaret Hall-Bowman, Pablo Qualifications (if required): having education or experience in criminology	Governor	1/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2014 THROUGH MARCH 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Public Education (Education) Ms. Patty Myers, Great Falls Qualifications (if required): resident of District 1 and she identifies herself as a Democrat	Governor	2/1/2014
Board of Regents (Education) Mr. Todd Buchanan, Billings Qualifications (if required): resident of District 2 and he identifies himself as an Independent	Governor	2/1/2014
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Jeffrey Herrick, no city listed Qualifications (if required): representative on the Board of Water Well Contractors	Director	3/19/2014
Greater Sage Grouse Habitat Conservation Advisory Council (Governor) Mr. Glenn Marx, Helena Qualifications (if required): Conservation and Sportsmen	Governor	1/31/2014
Representative Gary Forrester, Billings Qualifications (if required): Energy, Mining and Power Transmission	Governor	1/31/2014
Ms. Janet Ellis, Helena Qualifications (if required): Conservation and Sportsmen	Governor	1/31/2014
Rep. Bill McChesney, Miles City Qualifications (if required): Legislature	Governor	1/31/2014
Sen. Brad Hamlett, Cascade Qualifications (if required): Legislature	Governor	1/31/2014

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2014 THROUGH MARCH 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Greater Sage Grouse Habitat Conservation Advisory Council (Governor) cont. Rep. Pat Connell, Hamilton Qualifications (if required): Legislature	Governor	1/31/2014
Mr. Paul Callahan, Missoula Qualifications (if required): Energy, Mining and Power Transmission	Governor	1/31/2014
Mr. Jay Gore, Missoula Qualifications (if required): Conservation and Sportsmen	Governor	1/31/2014
Mr. Robert Lee, Forsyth Qualifications (if required): Agriculture and Local Government	Governor	1/31/2014
Rep. Ray Shaw, Sheridan Qualifications (if required): Legislature	Governor	1/31/2014
Mr. Carl Wambolt, Bozeman Qualifications (if required): Agriculture and Ranching	Governor	1/31/2014
Mr. Curtis Monteau Jr., Box Elder Qualifications (if required): Tribal Representative	Governor	1/31/2014
Judicial Nomination Commission (Justice) Mr. Paul Tuss, Havre Qualifications (if required): public representative	Governor	1/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2014 THROUGH MARCH 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Lottery Commission (Administration) Mr. Thomas M. Keegan, Helena Qualifications (if required): attorney	Governor	1/1/2014
Ms. Beth O'Halloran, Missoula Qualifications (if required): public member	Governor	1/1/2014
Montana Election and Technology Advisory Council (Secretary of State) Ms. Bonnie Ramey, Boulder Qualifications (if required): Jefferson County Clerk & Recorder	Secretary of State	1/2/2014
Ms. Vickie Zeier, Missoula Qualifications (if required): Missoula County Clerk & Recorder	Secretary of State	1/2/2014
Ms. Janice Hoppes, Conrad Qualifications (if required): Pondera County Clerk & Recorder	Secretary of State	1/2/2014
Ms. Sandra Boardman, Chinook Qualifications (if required): Blaine County Clerk & Recorder	Secretary of State	1/2/2014
Ms. Kathie Newgard, Polson Qualifications (if required): Lake County Election Administrator	Secretary of State	1/2/2014
Ms. Jeri Custer, Forsyth Qualifications (if required): Rosebud County Clerk & Recorder	Secretary of State	1/2/2014
Ms. Charlotte Mills, Bozeman Qualifications (if required): Gallatin County Clerk & Recorder	Secretary of State	1/2/2014

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2014 THROUGH MARCH 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Election and Technology Advisory Council (Secretary of State) cont. Mr. Bret Rutherford, Billings Qualifications (if required): Yellowstone County Election Administrator	Secretary of State	1/2/2014
Montana Grass Conservation Commission (Natural Resources and Conservation) Mr. Dan Teigen, Teigen Qualifications (if required): grazing district preference holder	Governor	1/1/2014
Mr. Steve Barnard, Hinsdale Qualifications (if required): grazing district director	Governor	1/1/2014
Mr. Jeff Willmore, Roy Qualifications (if required): grazing district preference holder	Governor	1/1/2014
Public Employees Retirement Board (Administration) Mr. Wilbert Lee Smith Jr., Great Falls Qualifications (if required): public employee/active in retirement system	Governor	3/19/2014
Small Business Health Insurance Pool Board (State Auditor) Ms. Amanda Harrow, Helena Qualifications (if required): consumer representing small business	Governor	1/1/2014
State Lottery Commission (Lottery) Rep. Cynthia Hiner, Deer Lodge Qualifications (if required): Public Representative	Governor	1/1/2014

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2014 THROUGH MARCH 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Traumatic Brain Injury Advisory Council (Public Health and Human Services) Ms. Kathy Smith, Great Falls Qualifications (if required): advocate of brain injured	Governor	1/1/2014
Ms. Melveena Malatare, Browning Qualifications (if required): advocate of brain injured	Governor	1/1/2014
Youth Justice Council (Justice) Judge Pedro Hernandez, Billings Qualifications (if required): representative of law enforcement	Governor	3/6/2014
Ms. Katie Champion, Bozeman Qualifications (if required): representative of private non-profit agencies	Governor	3/6/2014
Mr. Tim Brurud, Havre Qualifications (if required): representative of private non-profit agencies	Governor	3/6/2014
Mr. Larry Dunham, Condon Qualifications (if required): volunteer who works with delinquents	Governor	3/6/2014
Mr. Adam Stern, Livingston Qualifications (if required): local elected official	Governor	3/6/2014
Mr. Nick Korthais, Townsend Qualifications (if required): representative of law enforcement	Governor	3/6/2014
Mr. Roy Tanniehill, Helena Qualifications (if required): representative of law enforcement	Governor	3/6/2014

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2014 THROUGH MARCH 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Ms. Laura Bomboy Singley, Lewistown Qualifications (if required): representative of law enforcement	Governor	3/6/2014
Ms. Jilyn Oliveira, Helena Qualifications (if required): representative of public agencies	Governor	3/6/2014
Ms. Cindy McKenzie, Helena Qualifications (if required): representative of public agencies	Governor	3/6/2014
Ms. Leah Heffelfinger, East Helena Qualifications (if required): youth representative	Governor	3/6/2014
Mr. Nolan Cavanaugh, East Helena Qualifications (if required): youth representative	Governor	3/6/2014
Mr. Chaz McGurn, Helena Qualifications (if required): youth representative	Governor	3/6/2014
Ms. Elinor Nault, Box Elder Qualifications (if required): competency in addressing problems facing youth	Governor	3/6/2014
Ms. Pamela Carbonari, Kalispell Qualifications (if required): competency in addressing problems facing youth	Governor	3/6/2014

VACANCIES ON BOARDS AND COUNCILS -- JANUARY 1, 2014 THROUGH MARCH 31, 2014

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Youth Justice Council (Justice) cont. Ms. Erika Lindbloom, Lewistown Qualifications (if required): youth representative	Governor	3/6/2014
Mr. Randy Shipman, Dillon Qualifications (if required): representative of public agencies	Governor	3/6/2014