ISSUE NO. 17

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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 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.

Page Number

TABLE OF CONTENTS

NOTICE SECTION

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

In the matter of the proposed adoption of NEW RULES I through XIII; the proposed amendment and transfer of ARM 2.43.203 through 2.43.205, 2.43.301 through 2.43.303, 2.43.308 through 2.43.310, 2.43.402 through 2.43.408, 2.43.410, 2.43.418, 2.43.420 through 2.43.424, 2.43.426, 2.43.432, 2.43.433, 2.43.437, 2.43.440, 2.43.451, 2.43.452, 2.43.502 through 2.43.506, 2.43.508 through 2.43.511, 2.43.514, 2.43.515, 2.43.603, 2.43.604, 2.43.607, 2.43.611, 2.43.617, 2.43.801 through 2.43.804, 2.43.905, 2.43.914, 2.43.1002 through 2.43.1004, 2.43.1010 through 2.43.1012, 2.43.1015, 2.43.1017, 2.43.1020, 2.43.1031, 2.43.1032, 2.43.1045, 2.43.1046, 2.43.1101, 2.43.1104, 2.43.1111, 2.43.1112, 2.43.1210 through 2.43.1212, 2.43.1701, 2.43.1703, 2.43.1704, 2.43.1802, 2.43.1803, and 2.43.1810 through 2.43.1812; the proposed repeal of ARM 2.43.409, 2.43.425, 2.43.428 through 2.43.430, 2.43.520, 2.43.605, 2.43.606, 2.43.609, 2.43.610, and 2.43.1030; and the proposed transfer of ARM 2.43.201, 2.43.202, 2.43.304, 2.43.512, 2.43.513, 2.43.901, 2.43.902, 2.43.909 through 2.43.911, 2.43.1001, 2.43.1005, 2.43.1023 through 2.43.1025, 2.43.1040, 2.43.1105, 2.43.1108, 2.43.1110, 2.43.1113, 2.43.1115, 2.43.1118, 2.43.1119, 2.43.1702, 2.43.1705, and 2.43.1801, all pertaining to the operation of the retirement systems and plans administered by the Montana Public Employees' Retirement Board	)	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION, AMENDMENT AND TRANSFER, REPEAL, AND TRANSFER

TO: All Concerned Persons

1. On October 3, 2008, at 10:00 a.m., the Montana Public Employees' Retirement Board will hold a public hearing in the board room at 100 North Park Avenue, Suite 200, Helena, Montana, to consider the proposed adoption, amendment and transfer, repeal, and transfer of the above-stated rules.

2. The Montana Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Public Employee Retirement Administration no later than 12:00 p.m. on September 26, 2008, to advise us of the nature of the accommodation that you need. Please contact Angela Salvitti, Montana Public Employee Retirement Administration; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail asalvitti@mt.gov.

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

NEW RULE I CORRECTION OF DEFINED BENEFIT RETIREMENT SYSTEM REPORTING ERRORS (1) Employers may correct reporting errors affecting defined benefit retirement system members on subsequent pay period reports via a letter of explanation. The explanation must include all salary and service documentation for the reported error and the affected time period.

(2) After MPERA verifies that an error has been made in the contributions paid and the service reported, MPERA shall:

(a) notify the reporting agency of any contributions and interest due;

(b) credit any excess employer and member contributions to the employer on MPERA's payroll records; and

(c) adjust the member's membership service and service credit to the correct amount.

(3) The board may reduce interest due on delinquent contributions if the reporting error was not timely identified by MPERA staff.

(4) Corrections reducing a defined benefit retirement system member's contribution cannot be accepted if the employee has received a refund.

(5) If the service related to the reporting error was initially reported to the wrong retirement system, MPERA shall:

(a) transfer the correct amount of employer and employee contributions from the original retirement system to the correct retirement system;

(b) credit the employer with any excess employer and employee contributions or collect from the employer and pay to the original retirement system any additional employer and employee contributions; and

(c) transfer the member's service credit and membership service to the correct retirement system.

AUTH: 19-2-403, MCA
IMP: 19-2-506, 19-2-903, MCA

STATEMENT OF REASONABLE NECESSITY: ARM 2.43.404 is proposed to

address reporting requirements while New Rule I addresses defined benefit retirement system corrections and New Rule II addresses DCRP corrections. Sections (1), (2), and (4) combine revised versions of ARM 2.43.404(4) and (6) regarding correction of defined benefit retirement system reporting errors with ARM 2.43.409 regarding correction of defined benefit retirement system credited service errors to create one rule that addresses all issues associated with a defined benefit retirement system reporting error. This reorganization will make it easier for employers and MPERA staff to reference corrections of defined benefit retirement system-related reporting errors.

Section 19-2-506(2), MCA gives the board discretion to waive interest penalties associated with employer reporting errors. The board has seen instances when interest would have been reduced had MPERA staff timely recognized the reporting error. Section (3) recognizes these situations and gives the board authority to reduce the associated interest penalty.

Section (5) is necessary to address the correction of reporting errors that implicate more than one system. This situation has become more prevalent now that detention officers are members of SRS rather than PERS.

NEW RULE II CORRECTION OF DEFINED CONTRIBUTION RETIREMENT PLAN REPORTING ERRORS (1) Reporting errors affecting PERS members who elect the PERS defined contribution retirement plan (DCRP) will be corrected as follows:

(a) Corrections increasing a contribution will be credited to the participant's individual account within two working days of receipt of the contributions in good order.

(i) The employer must submit correct contributions for the entire period(s) of improper reporting.

(ii) The corrected contributions cannot be invested on a retroactive basis.

(iii) MPERA shall adjust the member's membership service to the correct amount, if necessary.

(b) Corrections reducing a contribution will decrease the participant's individual account.

(i) The DCRP recordkeeper will recover the incorrect contribution from the participant's individual account and submit a refund to MPERA.

(ii) MPERA shall credit the employer's account with the recovered contribution.

(iii) The employer must correct its payroll records and pay the refund to the DCRP participant.

(iv) MPERA shall adjust the member's membership service, if necessary.

(2) Reporting errors that result in a defined benefit retirement system member improperly electing to participate in the DCRP require the following accounting transactions:

(a) all funds from the ineligible member's DCRP account must be transferred to the member's appropriate defined benefit retirement system trust fund;

(b) the portion of employer contributions allocated to the plan choice rate

must be transferred to the DBRP trust fund;

(c) the portion of employer contributions paid into the DCRP long-term disability trust fund must be transferred to the DBRP trust fund; and

(d) the portion of employer contributions paid into the DCRP education fund must be transferred to:

(i) the defined benefit education fund, if a PERS member; or

(ii) the member's appropriate DBRP trust fund, if not a PERS member.

(3) Reporting errors that result in an Optional Retirement Program (ORP) member improperly electing to participate in the DCRP will be corrected by allocating contributions pursuant to 19-21-214, MCA.

(4) Corrections reducing a DCRP participant's contribution cannot be accepted if the participant has received a refund.

(5) After MPERA has documented to its satisfaction that all corrections have been made to the DCRP, MPERA shall then make any necessary corrections to the applicable defined benefit retirement system pursuant to [NEW RULE I].

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-903, MCA

STATEMENT OF REASONABLE NECESSITY: ARM 2.43.404 is proposed to address reporting requirements while New Rule I addresses defined benefit retirement system corrections and New Rule II addresses DCRP corrections. Most of (1) and all of (4) are currently in ARM 2.43.404(5) and (6) regarding correction of DCRP reporting errors. This reorganization will make it easier for employers and MPERA staff to reference corrections of DCRP related reporting errors.

Subsections (1)(a)(i) through (iii) are proposed to provide specific guidelines with respect to the employer's responsibilities and MPERA's responsibilities when correcting DCRP reporting errors. Sections (2), (3), and (5) are new sections to address how to correct reporting errors that result in an ineligible retirement system member joining the DCRP or ORP. This issue has arisen several times since implementation of the DCRP. Documentation of these approved processes will ensure consistency in application.

NEW RULE III CALCULATION OF HIGHEST AVERAGE COMPENSATION OR FINAL AVERAGE COMPENSATION (1) For "highest average compensation" and "final average compensation" purposes, compensation means the total compensation earned during 36 consecutive calendar months divided by 36.

(a) Lump-sum payments of paid leave, including vacation, personal, sick, or compensatory leave must be used to extend the compensation on the basis of either the regular hourly rate in effect for the employee at the time of termination and on identified future regular payroll reports, or the monthly salary earned at the time of termination.

(b) The lump-sum payment of paid leave, including vacation, personal, sick, or compensatory leave, for members whose monthly compensation varies will be extended by multiplying their hourly rate times 2080 (the assumed number of hours worked in a fiscal year) divided by 12 to determine the monthly wage going forward.

(2) Lump-sum payments for compensatory leave, sick leave, or vacation leave paid without termination of employment will not be considered as compensation for any purpose regardless how the payout is classified, including identifying the payout as a bonus.

AUTH: 19-2-403, MCA
IMP: 19-2-506, 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

STATEMENT OF REASONABLE NECESSITY: This proposed rule will simplify service calculations as analysts will no longer need to add portions of months to reach a total of 36 months of actual service. The proposed rule is consistent with statute and has no negative impact on members. Section (2) addresses issues regarding in-service payouts of excess compensatory or annual leave as bonuses, a practice becoming more common under the state's broadband pay plan. Statute prohibits including in-service payouts of excess leave in compensation for retirement purposes.

NEW RULE IV RETIREMENT SYSTEM MEMBERSHIP OPTIONS FOR LEGISLATORS (1) A legislator has three options with respect to retirement system membership.

(a) A legislator may elect membership in PERS.

(b) A legislator who is a member, but not a retiree, of JRS, GWPORS, HPORS, SRS, MPORS, or FURS due to their nonlegislative employment may elect to continue participation in their current public retirement system rather than electing PERS.

(c) A legislator may decline membership in any public retirement system.

(2) A legislator's application to join PERS, to join their existing public retirement system, or to decline retirement system membership must be filed with MPERA within 180 days of the first day of the legislator's term of office.

(3) A retired PERS member who is elected to a state or local government public office covered by PERS may elect to become an active member of PERS or remain a retired member, with no limitation on the number of hours worked in the elected position.

(4) A legislator who becomes a member of PERS must pay regular contributions on all compensation for service in office. PERS DBRP members may pay contributions for their entire term of office.

(a) Contributions must be paid through payroll deduction during a legislative session.

(b) Contributions for DBRP members may be paid directly to MPERA when the Legislature is not in session.

(c) The total contribution required for each term will be based on the statutory salary prescribed in 5-2-301, MCA, for that term, less any previous contributions.

(d) All contributions must be paid to MPERA no later than the last day of the legislator's final term in that office.

(e) Service credit and membership service will be granted pursuant to 19-3-521, MCA.

(5) A legislator who elects to continue participation in their nonlegislative retirement system pursuant to (1)(b):

(a) must pay contributions into their nonlegislative retirement system as provided for in 5-2-304, MCA; and

(b) may not retire from that system until their legislative service terminates.

(6) A senator who is subsequently elected to serve as a representative, or a representative who is subsequently elected to serve as a senator, is considered to have started a new term of office and has a new 180-day election period under (1) if they previously declined participation in any public service retirement system.

(7) A senator or representative whose district changes as a result of redistricting is not considered to have started a new term of office and does not have a new 180-day election period.

(8) A PERS DBRP member who elects to purchase into PERS previous service as a legislator must comply with 19-3-505, MCA, except the cost will not include interest for any contributions due on service prior to July 1, 1993.

AUTH: 19-2-403, MCA
IMP: 5-2-304, 19-2-715, 19-2-718, MCA

STATEMENT OF REASONABLE NECESSITY: Recently passed differences between retirement options available to legislators and retirement options available to other elected officials require two separate rules for easier understanding. This proposed new rule includes requirements from current ARM 2.43.418 that pertain to legislators and new requirements resulting from HB 765 (2007). HB 765 addresses a legislator's inability to retire from other public employment if the legislator elects to continue, while a legislator, to participate in the retirement system that covers the other public employment. The board believes the adoption of this rule will assist legislators in better understanding their retirement system options. Section (8) provides a reminder that prior to July 1, 1993, statute did not require that interest be charged on purchases of legislative service.

NEW RULE V PROCESS FOR PURCHASING SERVICE (1) Members of MPERA-administered retirement systems interested in purchasing any service credit permitted in PERS, JRS, HPORS, SRS, GWPORS, MPORS, or FURS must submit a written request to MPERA providing the following member information:

(a) full name, including previous surnames, if any;

(b) social security number;

(c) home address;

(d) current retirement system;

(e) name of employer for whom service was performed;

(f) type of service to be purchased, if known;

(g) dates of service to be purchased, if applicable; and

(h) number of years of "one-for-five" service to be purchased, if applicable.

(2) MPERA shall provide written notification to the member of the type and amount of service eligible to be purchased, and the cost of that service. All cost statements are valid for 30 days. Written notification will include:

(a) cost statement;

(b) service purchase contract;
(c) payroll deduction authorization form; and
(d) rollover/transfer notification form.

(3) A member who chooses to purchase service must complete and return the service purchase contract and the applicable payment form to MPERA. The service purchase contract must indicate:

(a) the type of service the member wishes to purchase;
(b) whether the member intends to purchase all, or a specific portion of the service; and
(c) how the member intends to pay for the service.

(4) Service can be purchased in a lump sum, through monthly payments, or by a combination of both. Service purchases other than by lump sum are subject to interest as determined by MPERA and computed over the entire payment period.

(5) Lump sum payment methods include cash, personal check, and direct rollovers or trustee-to-trustee transfers from an eligible retirement plan or IRA.

(a) Lump sum payments by cash or personal check require completion of the service purchase contract only.

(b) Payment by direct rollover or trustee-to-trustee transfers from an eligible retirement plan require completion of the service purchase contract and the rollover/transfer notification.

(6) Monthly installment payments can be made after tax through cash or personal check, or pretax through payroll deductions.

(a) Monthly installment payments that come directly from the member to MPERA require completion of the service purchase contract only.

(b) Monthly installment payments through paycheck deduction require completion of the service purchase contract and the payroll deduction authorization.

(7) If a monthly installment payment made through cash or personal check is missed, the service purchase contract will terminate and the member will receive prorated service credit based on the amount previously paid.

(8) The type of service being purchased cannot be changed once the purchase commences.

AUTH: 19-2-403, MCA
IMP: 19-2-704, MCA

STATEMENT OF REASONABLE NECESSITY: Currently ARM 2.43.423(4) summarily addresses the forms required to purchase and pay for service within MPERA-administered retirement systems. It is not clear from the title of ARM 2.43.423 that information regarding the purchase process is contained in the rule. Additionally, the listed requirements are incomplete. This proposed rule satisfies the requirements of 19-2-704, MCA, and establishes the process required of all members purchasing service in their retirement systems. The rule clarifies that the cost of the service purchase is not locked in until a contract exists. It further clarifies that a contract is required whether the service is purchased through payroll deduction, personal monthly payments, a direct lump-sum payment, or a roll-over of a lump-sum amount from another eligible retirement plan. The new rule will assist members in the service purchase process and establishes a process that meets IRS

guidelines regarding "pick-ups", thus maintaining our qualified status under IRS regulations.

NEW RULE VI PURCHASE OF SERVICE AT ACTUARIAL COST

(1) Members of an MPERA-administered retirement system who are eligible to and wish to purchase military, federal volunteer, one-for-five, out-of-state, Montana public service, or other public service from a previous retirement system to their current retirement system must pay the actuarial cost of that service.

(2) The actuarial cost of the service is determined as follows:

(a) The member's age and membership service as of the date of the request, each rounded to the nearest whole year, is used to determine the actuarial factor related to the number of years service to be purchased.

(b) The actuarial factor determined in (2)(a) is then multiplied by the member's compensation for the immediately preceding 12 months to determine the cost of the service to be purchased.

(3) A member of a retirement system is eligible to purchase only that service permitted to be purchased by statute.

AUTH: 19-2-403, MCA
IMP: 19-2-704, MCA

STATEMENT OF REASONABLE NECESSITY: Not all service purchases cost the same. This proposed rule assists members of the retirement systems and MPERA staff by listing in one location the types of service purchases which require payment of the actuarial cost of the service being purchased. "Actuarial cost" is a term not easily understood by anyone other than an actuary. The board believes it helpful to explain to members how actuarial cost is determined. Section (3), while seemingly obvious, will assist MPERA staff in responding to member questions regarding why they cannot purchase private or other ineligible employment into their public retirement system.

NEW RULE VII LIMITATIONS ON PURCHASES OF SERVICE (1) A PERS member may not purchase service unless and until the member elects to participate in the PERS Defined Benefit Retirement Plan.

(2) A retirement system member may not purchase the same period of military, federal volunteer service, or public service employment in more than one retirement system.

(3) A retirement system member may not receive service credit for any purchase of service related to any calendar month for which full service credit has already been granted.

AUTH: 19-2-403, MCA
IMP: 19-2-603, 19-2-715, 19-3-503, 19-3-515, 19-3-522, 19-5-410, 19-6-801, 19-7-803, 19-8-901, 19-9-403, 19-13-403, MCA

STATEMENT OF REASONABLE NECESSITY: New PERS members have one year in which to elect to participate in the defined benefit retirement plan or the

defined contribution retirement plan. Pursuant to 19-3-522, MCA, defined contribution retirement plan members cannot purchase service. Section (1) is necessary to ensure that a PERS member who wishes to purchase service is in fact eligible to do so. Sections (2) and (3) are proposed to be moved from ARM 2.43.407 in order to group all service purchase limitations in one rule. They are also expanded to include service purchases recently approved by the Legislature, including federal volunteer service such as Peace Corps time.

NEW RULE VIII GUARANTEED ANNUAL BENEFIT ADJUSTMENT COVERAGE – PERS, SRS, AND GWPORS (1) Members of PERS, SRS, and GWPORS who terminate covered employment, accept a refund of their accumulated contributions, and return to covered employment in the same system on or after July 1, 2007, will be eligible for a 1.5% GABA.

(2) Purchase of the refunded time does not affect the member's new hire date. The member will remain eligible for the 1.5% GABA, not the 3.0% GABA associated with the refunded time.

AUTH: 19-2-403, MCA
IMP: 19-2-603, 19-3-1605, 19-7-711, 19-8-1105, MCA

STATEMENT OF REASONABLE NECESSITY: The 2007 Legislature reduced GABA from 3% to 1.5% for PERS, SRS, and GWPORS members who are hired on or after July 1, 2007. The board believes it necessary to clarify that members hired on or after July 1, 2007 who previously were refunded their accumulated contributions for service prior to July 1, 2007, cannot qualify for the 3% GABA by purchasing that refunded time. Service prior to July 1, 2007 cannot qualify a new member for the 3% GABA if that member previously refunded the service because individuals who terminate employment and refund their service are no longer members of the retirement system. Their GABA must be based on their new hire date.

NEW RULE IX DESIGNATION OF BENEFICIARY BY MEMBERS, RETIREES, ALTERNATE PAYEES, AND CONTINGENT ANNUITANTS (1) A retiree, alternate payee, or contingent annuitant shall make the selection of beneficiary in writing and on the form provided by MPERA, dated and signed by the individual participant, and witnessed by a disinterested third party.

(2) The designation of beneficiary shall be effective immediately upon filing with MPERA.

AUTH: 19-2-403, MCA
IMP: 19-2-801, 19-2-907, 19-3-1501, 19-5-701, 19-7-1001, 19-8-1105, MCA

STATEMENT OF REASONABLE NECESSITY: The designation of beneficiary process for retirees and for participants other than retirement system members is not adequately covered in statute, particularly with respect to the effective date of the designation. The board believes a rule regarding a retiree's and a participant's

designation of beneficiary is needed to adequately inform retirees and participants of the process for designating beneficiaries.

NEW RULE X FIREFIGHTERS' MINIMUM BENEFIT ADJUSTMENTS

(1) When a city belonging to FURS has not negotiated a salary agreement with its actively employed firefighters by July 1 of any year, MPERA shall take the following actions:

(a) Retirement benefits will be paid to non-GABA retirees from that city using the most recent base salary for a newly confirmed firefighter negotiated by the city and reported to MPERA.

(b) When a salary agreement is negotiated by the city and MPERA is notified of a change in base pay for the city's newly confirmed firefighters, retirement benefits will be recalculated and adjustments paid retroactively to non-GABA retirees from that city.

(c) Updated reports will be sent to the State Auditor certifying the increased retirement benefits payable from insurance premium tax funds during a given fiscal year as those amounts become known.

AUTH: 19-2-403, MCA
IMP: 19-13-1007, MCA

STATEMENT OF REASONABLE NECESSITY: The retirement benefit to which this rule applies is for members of FURS who became active prior to July 1, 1997 and did not choose to participate in the guaranteed annual benefit adjustment (GABA) provided for in 19-13-1010 and 19-13-1011, MCA. Those individuals receive a retirement benefit increase based on the salary paid by their last employer to newly confirmed firefighters. The rule is necessary to address those instances when the city and the firefighters have not completed contract negotiations prior to July 1st.

NEW RULE XI HIGHWAY PATROL OFFICERS' MINIMUM BENEFIT ADJUSTMENTS (1) When the state of Montana has not negotiated a salary agreement with its actively employed highway patrol officers by July 1 of any year, MPERA shall take the following actions:

(a) Retirement benefits will be paid to non-GABA retirees using the most recent base salary for a newly confirmed highway patrol officer negotiated by the state and reported to MPERA.

(b) When a salary agreement is negotiated by the state and MPERA is notified of a change in base pay for newly confirmed highway patrol officers, retirement benefits will be recalculated and adjustments paid retroactively to non-GABA retirees.

AUTH: 19-2-403, MCA
IMP: 19-6-707, MCA

STATEMENT OF REASONABLE NECESSITY: The retirement benefit to which this rule applies is for members of HPORS who became active prior to July 1, 1997 and did not choose to participate in the guaranteed annual benefit adjustment (GABA)

provided for in 19-6-710 and 19-6-711, MCA. Those individuals receive a retirement benefit increase based on the salary paid by the state to newly confirmed highway patrol officers. The rule is necessary to address those instances when the state and the highway patrol officers have not completed contract negotiations prior to July 1st.

NEW RULE XII PAYMENTS TO SERVICE PROVIDERS FOR FUNERAL EXPENSES RESULTING FROM DUTY-RELATED DEATH (1) Payments for funeral expense claims made pursuant to Title 19, chapter 17, part 5, MCA, will be paid directly to funeral service providers after:

(a) the claim is properly filed as described in 19-17-503, MCA; and

(b) all personal and/or group insurance payments for those services first have been deducted from the claim.

(2) Funeral expense claims in excess of $1,000 must be approved by the board prior to payment by MPERA.

(3) Subsequent insurance settlements in payment of funeral expenses which have been previously paid by the board shall be reimbursed to the pension fund within 60 days of receipt by member or service provider.

AUTH: 19-17-203, MCA
IMP: 19-17-505, 19-17-506, MCA

STATEMENT OF REASONABLE NECESSITY: Although statute grants the board authority to authorize payment of funeral expenses under certain conditions, nothing in rule or statute establishes the mechanism by which to apply for that payment. The board proposes to adopt a rule for recovery of funeral expenses that is similar to the rule that addresses recovery of medical expenses, ARM 2.43.804. This new rule ensures a process exists and is followed, and that MPERA pays no more than $1,000 absent board approval.

NEW RULE XIII DEFINITIONS (1) Domestic Relations Order (DRO) is a draft document designed to divide a participant's 457 account pursuant to a domestic relations order.

(2) Qualified Domestic Relations Order (QDRO) is a domestic relations order that has been approved by the board.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: The board believes it would be helpful to specify the differences between a domestic relations order and a qualified domestic relations order. The board also prefers to define and use acronyms throughout the rules to save space and to promote ease of reading.

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

2.43.203 (2.43.1501) REVIEW OF ADMINISTRATIVE DECISION (1) An "administrative decision" means a decision issued by ~~the~~ MPERA that determines an individual's or an entity's legal rights, duties, or privileges pursuant to the provisions of Title 19, MCA.

(2) Parties who disagree with the administrative decision may appeal the decision to the board within 90 days of the date of written notification.

~~(2)~~ (3) Administrative decisions that are appealed to the board will be initially decided by the board on the basis of material properly submitted by MPERA and the appealing party, and such other information as the board deems appropriate. The board may, on its own motion, postpone its initial decision until the next regularly scheduled board meeting.

~~(3)~~ (4) The board will notify the appealing party of its initial decision in writing. If the decision is adverse to the appealing party, the board will include a general statement of the reasons for its decision, which need not be exhaustive. The appealing party will be given two options, either of which must be exercised within 30 days of the date of written notification:

(a) any appealing party may submit a request in writing for reconsideration by the board; or

(b) an appealing party, other than a governmental entity, may submit a request in writing for a contested case proceeding.

~~(4)~~ (5) A reconsideration by the board will be based on facts and matters submitted by the appealing party and MPERA to the board, the testimony of the appealing party before the board, and the presentation of the appealing party and MPERA, or their legal counsel, to the board.

(a) Unless otherwise ordered by the board pursuant to ~~(4)(b)~~ (5)(c), facts and matters may be submitted any time after the board's initial decision is issued until 21 days prior to the third regularly scheduled board meeting following issuance of the initial decision.

(b) Any response to submitted facts and matters must be provided to the opposing party no later than seven days prior to the regularly scheduled board meeting at which the matter will be considered.

(c) The board may, prior to issuing its decision on reconsideration and on its own motion, require the appealing party, MPERA, or both to submit additional facts and matters relevant to the issue before the board. The board may also, on its own motion, postpone its decision on reconsideration. However, in no case may the board prolong issuance of its decision on reconsideration for more than six months following issuance of its initial decision.

~~(c)~~ (d) The board will notify the party in writing of its decision on reconsideration. That decision will become final and will not be subject to a contested case proceeding or judicial review unless a party other than a governmental entity files a written request for a contested case proceeding within 30 days of the written notice of decision on reconsideration.

~~(5)~~ (6) The board's initial decision or decision on reconsideration, if appropriately requested, is final with respect to a party which is a governmental entity, and may not be appealed by that entity.

~~(6)~~ (7) ~~The~~ MPERA's administrative decision, the board's initial decision, and its decision on reconsideration will be mailed to the ~~appealing party~~ affected parties.

The time period for requesting further review of ~~either decision~~ any of the decisions will commence ~~on~~ three days following the ~~day~~ date of the letter notifying the parties of the decision ~~notice is mailed by MPERA staff, as indicated at the bottom of the decision~~. ~~Rule 6(e), M.R.Civ.P., does not apply and no additional time will be added because the decision is mailed.~~

~~(7)~~ (8) If a party fails to exercise an available option within the time allowed by the board, the board's decision becomes final and is not subject to contested case proceedings or judicial review. Thereafter, a party may only appear before the board on the same matter based on new and different facts that are not ~~cumulative or~~ repetitive, and for good cause shown.

~~(8)~~ (9) Unless otherwise provided, time periods ~~provided herein~~ may be enlarged only in writing by the board or its authorized representative and only on requests made prior to the expiration of the time period.

AUTH: 19-2-403, MCA
IMP: 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: There is currently no time limit regarding the appeal of a staff determination to the Public Employees' Retirement Board. A time limit is needed to ensure timely resolution of issues important to the financial status of members and employers. The 90 day time period provided for in (2) is believed by the board to be necessary to ensure adequate time for the appealing party to obtain information needed to support their position.

Time frames for appealing matters generally include a three day window for mailing. The board believes the current rule eliminating that three day window is an unnecessary procedural technicality that can inadvertently foreclose the appeal of a substantive issue important to members, employers, and the board. Therefore, the board proposes to insert the three day window typically followed when motions and appeals are mailed. The board also sees no reason to require the date of a decision to be at the bottom of the document. A standard date placement near the top of the document is adequate to provide notice of the start of the appeal time.

2.43.204 (2.43.1502) CONTESTED CASE PROCEDURES (1) Contested cases will be presided over and heard by a quorum of the board or a hearing examiner who may be any individual appointed by the board, including any board member.

(a) A party may seek to disqualify a hearing examiner only on the basis of a prehearing motion and affidavit containing an affirmative showing of prejudicial personal bias or lack of independence. The hearing examiner will rule on the motion or voluntarily ~~recuse (disqualify)~~ disqualify himself or herself. The ruling will not be reviewed by the board ~~except when the personal bias or lack of independence is demonstrated by reference to the hearing examiner's proposed findings of fact, conclusions of law, and order~~.

(b) The hearing examiner has general authority to regulate the course of contested cases and may exercise the power and authority provided or implied by law, including 2-4-611, MCA.

(c) The hearing examiner may establish prehearing and hearing dates and procedures, rule on procedural matters, make proposed orders, findings and conclusions, and otherwise regulate the conduct and adjudication of contested cases as provided by law. The hearing, unless the parties stipulate otherwise, shall be conducted in the following order:

(i) the statement and evidence of the party opposing the board's initial decision or decision on reconsideration;

(ii) the statement and evidence of ~~the~~ MPERA; and

(iii) rebuttal testimony.

(d) The contested case hearing must be conducted in Helena. The parties and their witnesses must appear in person unless, for good cause shown, the hearing examiner determines otherwise.

(e) The hearing examiner shall enter proposed findings of fact, conclusions of law, and order, with any necessary explanation, for review and final determination by the board.

(f) The jurisdiction and authority of a hearing examiner terminates upon the entry of a proposed order unless the board delegates further authority.

(2) Exceptions to proposed findings of fact, conclusions of law, and orders that are allowed by statute must be filed with ~~the~~ MPERA and served upon opposing counsel within 20 days of service of the proposed findings, conclusions, and order. Any response must be filed within ~~10~~ ten days of service of the exceptions.

(a) Briefs in support are not required, but if filed, must be filed simultaneously with exceptions or responses.

(b) Requests for oral argument must be in writing, and must be filed simultaneously with the exceptions or responses.

(c) Date of service shall be the date indicated on the appropriate certificate of service or certificate of mailing. ~~The date of filing shall be the date of actual delivery or the postmarked date of mailing.~~

(d) The board may request briefing, additional briefing, or oral argument by the parties.

(e) The board's final decision must be issued no later than 90 days after the matter is submitted to the board, unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.

(3) If a quorum of the board hears the contested case, the board may use a hearing examiner for procedural rulings and administrative purposes, and to assist in the drafting of a final order. A final order so adopted will be the final administrative decision of the board, subject only to judicial review.

(4) An attorney may be assigned to present a case or to appear in any contested case to represent the interests of MPERA ~~or the board~~. A different attorney will be assigned to assist the board in reaching its determinations with respect to that contested case.

(5) A contested case hearing, and any other proceeding before a hearings examiner, will be recorded electronically unless a party notifies the hearing examiner no later than 20 days prior to the proceeding that the party wants to retain a ~~stenographic record~~ court reporter for the hearing. The party ~~requiring a stenographic record~~ requesting the court reporter must arrange and pay for the court reporter.

(a) ~~Any electronic or stenographic~~ The record shall be transcribed on the request of any party. The cost of the transcription shall initially be paid by the requesting party. A party who has a transcript prepared shall provide a copy to any other party requesting it in exchange for the proportional cost of transcribing the original and the necessary copies. A copy must also be provided to the hearing examiner, at no cost.

(b) The party(ies) filing exceptions to the hearing examiner's proposed order must file the original and ~~a total of eight copies~~ one copy of the transcript with the board only if exceptions have been filed to the hearing examiner's proposed findings of fact.

(c) If an electronic recording of any hearing or proceeding is defective or cannot be transcribed, the hearing examiner may reconstruct the record or the parties may reconstruct the record by stipulation. The record so reconstructed will constitute the record for determination and review of findings of fact.

AUTH: 19-2-403, MCA
IMP: 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: The current language in (1)(a) is internally inconsistent. A prehearing motion cannot be used to allege personal bias or lack of independence within proposed findings, conclusions, and order. Motions to disqualify should be based on information known at the time a hearing examiner is appointed; not on the content of the proposed findings, conclusions, and order. If bias or lack of independence exists within the proposed order, the issue can be raised as part of the exceptions filed with the board pursuant to (5)(b).

Subsection (2)(e) is proposed to ensure the board's contested case proceedings comply with the time limitations set forth in 2-4-623, MCA. That statute was amended in 2005 to provide a time frame for the issuance of a final decision following submission to the final, nonjudicial decision maker. The board believes the statute should be included in the board's contested case procedures to eliminate any confusion as to its applicability.

The terms "filed" and "filed with the board" are now defined in ARM 2.43.302. The board proposed to delete the sentence in (2)(c) as it is inconsistent with the definition found in ARM 2.43.302.

The remaining proposed changes reflect changes in board personnel and board processes. The board now employs two attorneys. Section (4) avoids potential conflict by ensuring that the attorney representing MPERA is not the attorney representing the board. Stenographic records have been replaced with recordings. Finally, board personnel will, in the future, copy hearing transcripts for each board member. Therefore, only one copy need be filed with the board.

2.43.205 (2.43.1503) REGULATIONS APPLICABLE TO CONTESTED CASES (1) To the extent these rules do not provide for or specify procedures, or where necessary to supplement these rules, ~~the provisions of the Montana~~

~~Administrative Procedure Act and attorney general's model rules apply. The~~ the Montana Administrative Procedure Act, Montana Rules of Civil Procedure, Montana Uniform District Court Rules, or Montana Rules of Evidence may be utilized to the extent that they clarify fair procedures, expedite determinations, and assist in the adjudication of rights, duties, or privileges of parties.

AUTH: 19-2-403, MCA
IMP: 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: The board proposes to delete language that is either redundant or inconsistent with ARM 2.43.201. ARM 2.43.201 addresses applicability of the Attorney General's model rules. There is no need to address the Attorney General's model rules again in this rule.

2.43.301 (2.43.1301) RETIREMENT SYSTEMS COVERED (1) Except where specifically noted, all the rules ~~stated herein~~ in this subchapter are in effect for the following retirement systems:

(a) Public Employees' (PERS);
(b) Game Wardens' and Peace Officers' (GWPORS);
(c) Judges' (JRS);
(d) Highway Patrol Officers' (HPORS);
(e) Sheriffs' (SRS);
(f) Municipal Police Officers' (MPORS); and
(g) Firefighters' Unified (FURS).

(2) Each of the above-listed retirement systems also have their own subchapter containing rules unique to that system. Both this subchapter and the subchapter designated for a particular retirement system should be consulted when determining applicable administrative rules.

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202~~ 19-2-403, MCA
IMP: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, and 19-13-202~~ 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: The board is revising the format of its rules to reflect the format of the retirement system statutes found in Title 19, MCA. This subchapter will now address rules common to all defined benefit retirement systems administered by the board. Other subchapters will address rules applicable to individual retirement systems. Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

2.43.302 (2.43.1302) DEFINITIONS Undefined terms used in this chapter are consistent with statutory meanings. Defined terms will be applied to the statutes unless a contrary meaning clearly appears. For the purposes of this chapter, the following definitions apply:

(1) "Additional service" means one year of service for each five years of membership service as explained in ARM 2.43.432.

~~(1)~~ (2) "Benefit recipient" means any retired member, contingent annuitant, or survivor who receives a monthly benefit payment from a retirement system. It does not include a beneficiary who receives a lump-sum payment or an annuity.

~~(2)~~ (3) "Board" means the Montana Public Employees' Retirement Board.

~~(3)~~ (4) "Contested case" means a legal proceeding, as set forth in these rules, subsequent to preliminary administrative determination.

~~(4)~~ (5) "Contingent beneficiary" means a beneficiary designated to receive payments if all primary beneficiaries are deceased. Contingent beneficiaries will be on a share and share alike basis, unless the member specifies otherwise.

~~(5)~~ (6) "Continuous employment" means a member serves in full-time, part-time, or seasonal employment, but does not terminate service nor withdraw the accumulated contributions from the member's account.

(7) "DBRP" means the defined benefit retirement plan within PERS.

(8) "DCRP" means the defined contribution retirement plan within PERS.

~~(6)~~ (9) "Employment" or "reemployment" means the performance of services for an employer by a person other than an independent contractor. If any of the four factors listed in ~~(10)~~ (16) indicate control or direction by the employer, an employment relationship exists.

~~(7)~~ (10) "Filed" or "filed with the board" generally means the mailing of a form or payment in a stamped envelope which is properly addressed to ~~the~~ MPERA or the board. The postmark date will be used to determine the date on which filing occurs. If the form or payment is hand-delivered, it is considered filed on the day it is personally delivered to the MPERA office. If the form is faxed to MPERA or the board, it is considered filed on the day it is received in the MPERA office, provided a hard copy is received in the MPERA office within five working days of the filing date. A form cannot be filed by e-mail as ~~a~~ an original signature is required.

~~(8)~~ (11) "Full-time employment" for service credit~~,~~ means an employer or employers paid the member for at least 160 hours during a calendar month. A member may not receive more than one month credit for months in which the member receives pay for more than 160 hours.

~~(9)~~ (12) "Full-time public service employment" means full time employment which when it was performed was not covered by a system referred to in 19-2-302, MCA, and may not otherwise be credited in a retirement system.

(13) "FURS" means the Firefighters' Unified Retirement System.

(14) "GWPORS" means the Game Wardens' and Peace Officers' Retirement System.

(15) "HPORS" means the Highway Patrol Officers' Retirement System.

~~(10)~~ (16) "Independent contractor" means an individual who renders service in the course of an occupation and is both:

(a) engaged in an independent trade, occupation, profession, or business; and

(b) under contract and in fact, at all times free from control or direction over the performance of the services.

(i) ~~The~~ MPERA may consider but is not limited to the following factors when determining freedom from control and direction:

(A) right or exercise of control of the means by which the work is accomplished;

(B) method of payment (time basis indicates employment);

(C) furnishing of equipment; and

(D) employer's right to fire.

(ii) Independent contractor status may only be established by a convincing accumulation of these factors indicating freedom from control or direction over performance of the services.

(17) "JRS" means the Judges' Retirement System.

~~(11)~~ (18) "MPERA" means the Montana Public Employee Retirement Administration.

(19) "MPORS" means the Municipal Police Officers' Retirement System.

~~(12)~~ (20) "Part-time employment" for service credit~~,~~ means an employer or employers paid a member for less than 160 hours during a calendar month.

~~(13)~~ (21) "PERS" means the Public Employees' Retirement System.

~~(14)~~ (22) "Primary beneficiary" means a beneficiary designated to receive payments upon the death of a member. Primary beneficiaries will be on a share and share alike basis, unless the member specifies otherwise.

~~(15)~~ (23) "Seasonal employment" means employment ~~within a calendar or fiscal year which is less than 6 months duration. Seasonal employment occurs on an on going basis during the same months in succeeding years~~ of a permanent employee who is designated by an agency as seasonal, who performs duites interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

~~(16)~~ (24) "Service years" or "years of service" means periods of 12 calendar months of membership service which qualify members for retirement or other benefits.

(25) "SRS" means the Sheriffs' Retirement System.

~~(17)~~ (26) "Survivor" means the designated or statutory beneficiary of a member who dies while in service.

(27) "VFCA" means the Volunteer Firefighters' Compensation Act.

AUTH: 19-2-403, MCA
IMP: ~~Title 19, Ch. 2, 3, 5, 6, 7, 8, 9, 13~~ 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: Pursuant to 19-3-513, 19-5-409, 19-6-804, 19-7-804, 19-8-904, 19-9-411, and 19-13-405, MCA, "additional service" is a defined term used when referencing "one-for-five" service. Previous rules have used the term incorrectly. Inclusion of the correct definition within the rules, along with the correct use of the term throughout the rules, is needed for accuracy and correct understanding of the rules.

Section (10) is proposed to be amended to recognize that signatures can now be affixed to e-mail messages. However, since there is no guarantee the signator is the person who affixed the signature to the message, the board will not recognize the document as having the required signature. Section (23) is proposed to be amended to adopt the definition of seasonal employment used by the Department of Administration and found at 2-18-101(23), MCA.

Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

2.43.303 (2.43.1405) REQUEST FOR RELEASE OF INFORMATION ~~BY MEMBERS~~ (1) Telephone requests from system members or benefit recipients for general information will be handled in a manner most efficient to both the member or benefit recipient and ~~the division~~ MPERA, subject to written verification.

(2) Specific information, particular to a member or benefit recipient's account, will only be released by MPERA upon receipt ~~by the division~~ of a written authorization signed by the member or benefit recipient.

(3) The ~~administrator~~ executive director may release information to governmental agencies with statutory authority to access specific information. The requesting agency must submit the request in writing citing proper legal authority to obtain the specific information.

AUTH: 19-2-403, ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202,~~ MCA
IMP: ~~Title 19, Ch. 2, 3, 5, 6, 7, 8, 9, 13~~ 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: There is no longer a Public Employees' Retirement Division (PERD or division). It is now the Montana Public Employee Retirement Administration (MPERA). The division's "administrator" is now the "executive director."

2.43.308 (2.43.1406) MAILING FOR NONPROFIT ~~GROUPS~~ RETIREE ORGANIZATIONS (1) ~~The division~~ MPERA may mail materials or contract to have materials mailed to retirees for eligible nonprofit retiree ~~groups~~ organizations. ~~The division may send the materials to retirees, or to members requesting estimates of their retirement benefits.~~

(a) Contractors who mail materials for eligible nonprofit retiree organizations must agree to keep addresses confidential and to destroy all address sources immediately following completion of the mailing.

(b) The information may also be sent to system participants as a part of or in addition to regular newsletters.

(2) Eligible nonprofit ~~groups are limited to groups formed for participants of board-administered retirement systems. The group~~ retiree organizations must be tax exempt under section 501(c)(4) of the Internal Revenue Code. ~~It~~ They must also hold a nonprofit mailing permit from the U.S. Postal Service ~~in Helena, Montana~~.

(3) ~~The division~~ MPERA will provide application forms. A nonprofit ~~group~~ retiree organization must submit an application to ~~the division~~ MPERA at least one month before any mailing. An application packet must contain:

(a) an application form signed by an officer of the ~~non-profit group~~ organization;

(b) a copy of the IRS letter exempting the ~~group~~ organization under section 501(c)(4) of the tax code;

(c) a copy of the certificate of incorporation as a nonprofit entity in Montana;

(d) if requesting bulk mailing, a copy of the ~~group's~~ organization's current

U.S. Postal Mailing Permit; and

(e) an exact copy of the materials to be mailed.

(4) Upon approval, ~~the division~~ MPERA will ~~bill~~ provide the nonprofit retiree organization ~~for~~ the estimated cost of the mailing. For bulk mailing, ~~the division~~ MPERA will provide a proposed completion date. ~~The organization must pay the total estimated cost at least 10 working days before the mailing.~~

(5) When the mailing is complete, ~~the division~~ MPERA will bill the nonprofit retiree organization for ~~any additional~~ the cost of the mailing. For mail inserted with estimates, ~~the division~~ MPERA will send the ~~group~~ organization a bill each month. All charges must be paid within 30 days of billing. Thereafter, ~~the division~~ MPERA will charge the greater of interest at 9% compounded monthly from the billing date or $10 per day.

AUTH: 19-2-403, MCA
IMP: 2-6-109, 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: There is no longer a Public Employees' Retirement Division (PERD or division). It is now the Montana Public Employee Retirement Administration (MPERA).

Section 2-6-109, MCA, permits the board to use its mailing lists to send materials to retirement system participants on behalf of certain nonprofit retiree organizations. The term "group" is too vague and is therefore being replaced with "nonprofit retiree organization" the first time the term is used in each subsection and with "organization" when "group" is later used in each subsection. Section 2-6-102, MCA was amended in 1997 to reference the term "organization" rather than "third party". This proposed change is therefore consistent with statute.

Given the increase in participants, MPERA has found it easier and less time consuming to contract with publishing companies to provide the permitted mailings. However, confidential information must remain confidential. The proposed language in (1)(a) mirrors that used in contracts between MPERA and the publishing companies.

Requests come from nonprofit retiree organizations located all over the state and are mailed out by publishing companies state-wide. A Helena nonprofit mailing permit is no longer necessary.

2.43.309 (2.43.1407) ACCEPTABLE MATERIALS -- NONPROFIT RETIREE ORGANIZATION MAILING (1) ~~The division~~ Pursuant to ARM 2.43.308, MPERA will mail materials which conform to the following criteria:

(a) the packet of materials mailed to each person must be identical;

(b) each packet may include an application for membership in the nonprofit ~~group~~ retiree organization and general information about the ~~group's~~ organization's activities. ~~No piece may urge or recommend~~ Material recommending actions that are not within the nonprofit nature and scope of the ~~group~~ organization are prohibited. For example, ~~a group~~ an organization may not urge voting for a

particular individual or joining another ~~or affiliated group~~ organization or affiliation.

(2) Each piece inserted with retirement estimates must be one single page, no larger than 8 1/2 inches by 17 inches, folded to fit within a regular business envelope. It may not be stapled or sealed in any manner.

(3) Each packet for bulk mailing must meet current postal requirements and must be printed with the ~~group's~~ nonprofit retiree organization's nonprofit mailing permit.

AUTH: 19-2-403, MCA
IMP: 2-6-109, 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: There is no longer a Public Employees' Retirement Division (PERD or division). It is now the Montana Public Employee Retirement Administration (MPERA).

Section 2-6-109, MCA, permits the board to use its mailing lists to send materials to retirement system participants on behalf of certain nonprofit retiree organizations. The term "group" is too vague and is therefore being replaced with "nonprofit retiree organization" the first time the term is used in each subsection and with "organization" when "group" is later used in each subsection. Section 2-6-102, MCA was amended in 1997 to reference the term "organization" rather than "third party". This proposed change is therefore consistent with statute.

Subsection (1)(b) is rewritten to promote clarity and understanding, and to use terms consistent with those in statute.

2.43.310 (2.43.1408) RIGHT TO BE EXCLUDED -- NONPROFIT RETIREE ORGANIZATIONS (1) Any member or other person receiving benefits from a retirement system may request to be excluded from receiving, pursuant to ARM 2.43.308, a mailing on behalf of all nonprofit retiree organizations by submitting a written request to ~~the division~~ MPERA.

(2) Requests for exclusion will become effective no later than 30 days after ~~the division~~ MPERA receives the signed written request.

AUTH: 19-2-403, MCA
IMP: 2-6-109, 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: There is no longer a Public Employees' Retirement Division (PERD or division). It is now the Montana Public Employee Retirement Administration (MPERA).

ARM 2.43.308 is included in order to clarify the mailings to which this rule applies.

Section 2-6-109, MCA, permits the board to use its mailing lists to send materials to retirement system participants on behalf of certain nonprofit retiree organizations. Current language references any type of nonprofit organization when the rule should be limited to nonprofit retiree organizations in order to comply with statute.

2.43.402 (2.43.2104) MEMBERSHIP CARDS (1) Each ~~contributing employee~~ member must complete a membership card upon employment, name change, or change of beneficiary, and ~~this~~ return the card to their employer. The card must be immediately forwarded by the ~~employing agency~~ employer to ~~the retirement division~~ MPERA.

~~(2) No benefit will be processed, or refund of contributions made, unless the division has a completed membership card on file.~~ The designation of beneficiary is only effective upon receipt by MPERA.

(2) If a member accepts a temporary or second job covered by the same retirement system as their other existing job, the member must:

(a) indicate "temporary" or "dual employment" status on the card; and

(b) leave the beneficiary nomination section blank unless the member intends to override their beneficiaries currently on file with MPERA.

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: ~~19-3-401, 19-5-602, 19-6-602~~ 19-2-801, 19-6-505, ~~19-7-602, 19-8-702, 19-9-912~~ 19-9-1102, 19-13-903, MCA

STATEMENT OF REASONABLE NECESSITY: A "contributing employee" is typically referred to as a "member." Use of the correct term promotes clarity and understanding. Current language is less than clear regarding MPERA's requirement that the member give the membership card to their employer, who is to then forward the membership card to MPERA. This process is required to ensure that MPERA does not receive multiple, perhaps conflicting, cards for one employee. It also ensures that the employer is aware of address changes.

MPERA has determined that a completed membership card is not necessary before refunds can be issued. Membership cards are used to identify the member's beneficiaries. That information is not needed when issuing a refund directly to the member. On occasion, refunds have been delayed pending a search for a missing membership card. The proposed amendment will eliminate this possibility.

Membership cards are required for each covered employment. Occasionally, retirement system members engage in a second occupation which requires the filing of an additional membership card. One example is covered employees who fight fire for the Montana Department of Natural Resources and Conservation while on vacation from their primary job. It has come to MPERA's attention that membership cards filed for temporary or secondary employment often fail to identify the member's beneficiaries. Without the proposed rule language, the member's intended beneficiaries may be incorrectly overridden by MPERA. The proposed language will ensure correct beneficiary information.

2.43.403 (2.43.2102) OPTIONAL MEMBERSHIP (1) Employees for ~~which~~ whom membership in ~~a retirement system~~ PERS is optional may become members by completing an application ~~form~~ provided by the board. The application ~~form~~ must

be filed ~~with the board~~ within the time set in applicable statute. Membership becomes effective upon filing and is not retroactive except as provided in (5) ~~180 days of commencement of the employment for which membership is optional, or within 180 days of the effective date of the statute permitting optional membership, whichever is later~~. Except as provided in (2), once elected, members may not discontinue membership without termination of employment.

(2) The board may permit an employee to discontinue optional membership if the employee submits proof that the employee was not informed membership was optional. The employee must submit such proof within 180 days of the employee's first day of employment, or within 180 days of the filing of the application form, whichever is later.

~~(3)~~ (a) Membership discontinued pursuant to (2) must be treated as a reporting error and will be corrected pursuant to ARM 2.43.409.

(b) The board shall issue a credit to the employer for all erroneous contributions~~, plus interest, to the employer~~.

(c) The employer ~~will be~~ is responsible for refunding appropriate contributions to the employee.

(3) If an employer discovers that an eligible employee was not notified of the option to join PERS, the employer must:

(a) provide the employee the optional membership application form immediately upon discovery of the omission;

(b) notify the employee that the application must be completed within 180 days of employment, or within 30 days after receipt of the application, whichever is later; and

(c) notify MPERA of the omission and the employee's decision whether or not to join PERS.

(4) If, pursuant to (3), the employee elects not to become a member of PERS, the employer must still report the employee to MPERA as a nonmember pursuant to ARM 2.43.404.

(5) If, pursuant to (3), the employee elects to become a member of PERS, membership will begin the first day of the first pay-period for which the employer reports the employee as a member of PERS and pays PERS contributions on behalf of the member. Membership will not be retroactive. However, a member electing the DBRP may chose to purchase the retroactive service under 19-3-505, MCA.

AUTH: 19-2-403, MCA
IMP: 19-2-903, 19-3-412, ~~19-13-301,~~ MCA

STATEMENT OF REASONABLE NECESSITY: PERS is the only MPERA-administered public employee retirement system with optional membership provisions. Part-paid firefighters in FURS are addressed adequately in statute. Optional membership elections must, pursuant to 19-3-412(3), MCA, be filed within 180 days of employment. There is no need to restate statutory requirements within the rule.

Section 19-3-412, MCA, is silent regarding the retroactive nature of the optional membership election. However, an employee cannot become a member of a

retirement system until contributions are paid into the system on the member's behalf. Therefore, new section (6) clarifies that membership does not start until the election has been filed and contributions commence. Members need to be aware that service prior to that time is retroactive service and can be purchased by the member, then credited to their PERS account.

Incorrect information regarding PERS membership and PERS optional membership leads to reporting errors. Proposed new language in (2) and new sections (3), (4), and (5) are necessary to inform employees and employers of the process for correcting the reporting error and the effective date of the correction. Information regarding the effective date of the correction is especially pertinent now that PERS members have one year from first being reported to PERS to choose whether to participate in the defined benefit or the defined contribution retirement plan.

Language in subsection (2)(b) regarding the crediting of contributions was adopted prior to July 1, 1985, when contributions were remitted on an after tax basis and interest could be credited back to the employer. Now that contributions are paid pretax, only the exact amount of contributions can be credited to the employer in the event of a reporting error.

2.43.404 (2.43.2114) REQUIRED EMPLOYER REPORTS (1) All reporting agencies shall ~~submit~~ file required employer reports, other than working retiree reports required by ARM 2.43.506, no later than five working days after each regularly occurring payday.

(a) Each report must be accompanied by statutorily required employer and employee contributions to the retirement system. The required contribution rate is the rate in effect at the time the employees are paid, and not the contribution rate in effect when the compensation was earned.

~~(a)~~ (b) Beginning July 1, 2003, reporting agencies shall use ~~the~~ MPERA's online web-based reporting system and shall remit payment via automated clearing house (ACH).

~~(b)~~ (c) If the reporting agency does not have access to the internet, the employer reports may be either hard-copy or electronic, but must be in the format provided by ~~the~~ MPERA, and must be accompanied by the payment of applicable contributions.

(2) The report must be in alphabetical order by last name and contain for each employee, ~~including any state or local elected official who is an active member of PERS~~ regardless whether the employee is a member of a MPERA-administered retirement system or not:

(a) social security number;
(b) last and first name;
(c) salary;
(d) regular contributions, if any;
(e) ~~additional~~ service purchase contributions, if any;
(f) the actual hours for which the employee received compensation; and
(g) each employee who terminated during the pay period being reported.

(3) In addition to the information contained in (2), employers must also

provide the home addresses of employees who are members of an MPERA-administered retirement system. Home addresses of nonmembers are not required.

(4) Reports filed by PERS employers must also include any state or local elected official.

(5) Reporting agencies of the Montana university system (MUS) shall report employees in PERS covered positions who elect the MUS optional retirement program (ORP). The MUS ORP report must include all information required in (2). At the same time, reporting agencies of the MUS shall transmit amounts equal to the statutorily required plan choice rate and the education fund rate for those employees.

~~(4) Reporting errors affecting defined benefit plan members may be corrected on subsequent pay period reports via a letter of explanation that must include all salary and service documentation for the reported error and the affected time period. The MPERA will then notify the reporting agency of the necessary action, including contributions and interest due.~~

~~(5) Reporting errors affecting PERS members who elect the PERS defined contribution retirement plan (DCRP) will be corrected as follows:~~

~~(a) Corrections increasing a contribution will be credited to the participant's individual account within the timeframe established in ARM 2.43.1031 and will not be retroactive.~~

~~(b) Corrections reducing a contribution will decrease the participant's individual account.~~

~~(i) The DCRP recordkeeper will recover the incorrect contribution from the participant's individual account and submit a refund to the MPERA.~~

~~(ii) The MPERA will submit the refund to the reporting agency.~~

~~(iii) It is the reporting agency's responsibility to correct payroll records and submit the refund to the DCRP participant.~~

~~(6) Corrections reducing an employee's contribution cannot be accepted if the employee has received a refund.~~

AUTH: 19-2-403, ~~19-3-2104,~~ MCA
IMP: 19-2-506, 19-3-315, 19-3-316, 19-3-412, 19-3-1106, ~~19-3-2104~~ 19-3-2117, 19-7-1101, MCA

STATEMENT OF REASONABLE NECESSITY: The current rule contains three distinct topics: (1) employer reporting requirements; (2) correction of reporting errors within the defined benefit retirement plan (DBRP); and (3) correction of reporting errors within the defined contribution retirement plan (DCRP). The board believes that placing each topic into its own rule would promote clarity and ease of understanding. Separate rules would also better educate employers regarding the different reporting requirements for the two plans. Therefore, ARM 2.43.404 is proposed to address reporting requirements while New Rule I will address DBRP corrections and New Rule II will address DCRP corrections.

PERS and SRS employer contribution rates changed effective July 1, 2007. Some PERS employers with a pay period containing days in June 2007 and days in July 2007 were unclear when to commence reporting, and contributing, the higher rate.

Subsection (1)(a) is necessary to notify employers of the board's standard reporting requirement – contributions are to be paid based on when the compensation is reported to the board, and not when the compensation is earned. Therefore, the new contribution rate was effective for pay periods reported to the board on or after July 1, 2007, regardless when the compensation was earned. The same will be true for any future contribution rate changes.

Section 19-2-506(3), MCA, requires the board to adopt employer reporting rules that address both member and nonmember employees. New language in (2) clarifies that reporting requirements apply to all employees, not just employees who are members of board-administered retirement systems.

"Additional contributions" other than service purchases are no longer allowed by statute.

2.43.405 (2.43.2101) MEMBERSHIP (1) An eligible employee becomes a member of a retirement system on his first day of covered employment under that system.

(2) A member of PERS, GWPORS, or ~~Sheriffs' Retirement System~~ SRS who elects to ~~requalify~~ purchase previously refunded service in ~~his~~ their current system ~~shall have, as his first day of membership, be the first day of his requalified service~~ will increase their service credit but will not change first day of membership in their current retirement system. Therefore, their guaranteed annual benefit adjustment (GABA) eligibility date will not be affected.

(3) A member of ~~the police~~ MPORS or ~~Firefighters' Unified Retirement Systems~~ FURS ~~shall not have his first day of membership changed by any election to requalify previously refunded service~~ who elects to purchase previously refunded service in their current system will increase their service credit but will not change their first day of membership in their current retirement system. Therefore, the formula used for calculating their retirement benefit will not be affected.

(4) A retirement system ~~member of a retirement system will not affect his~~ member's first day of membership service ~~because of~~ will not change due to any voluntary election to transfer service ~~credits~~ credit into ~~this~~ that system from another system or to ~~qualify~~ the purchase of any other full-time public service employment or military service.

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202,~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 3, part 4, part 5, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, part 6, Ch. 13, part 3, part 4~~ 19-2-303, 19-3-1605, 19-7-711, 19-8-1105, MCA

STATEMENT OF REASONABLE NECESSITY: MPERA is changing "qualify" to "purchase" throughout our rules, similar to legislative changes in 2003. The term "qualify" could be confused with requirements that retirement systems being administered by MPERA must be "qualified" retirement plans. The term "purchase" better represents the process by which a member can increase the amount of their

service credit.

Since GABA and retirement formulas are now based on hire date, MPERA believes it necessary to clarify that a member cannot change their date of hire through a service purchase. GABA must be based on actual service, not a service purchase. Service credit is a defined term that can mean one or multiple units of service credit. The term service "credits" is obsolete.

2.43.406 (2.43.2105) BASIC PERIOD OF SERVICE (1) The month is the basic period for the awarding of service credit and membership service for all retirement systems.

(a) Except as otherwise specified by rule or statute, 160 hours of service credit will equal one month of service credit, regardless of the calendar period during which the service credit was earned.

(b) Except as otherwise specified by rule or statute, 12 months of service credit will equal one year of service credit, regardless of the calendar period during which the service credit was earned.

(c) Service credit granted for any fiscal year may not be greater than one year.

(2) Service credit of less than 160 hours in a calendar month constitutes part-time service.

~~(3) If only compensation for full-time covered employment is used to calculate "final average compensation" or "highest average compensation" and if the member has both full- and part-time service, then the member must be granted proportional service credit for service in each calendar month of employment. The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by 160 hours, but may not be greater than one.~~

~~(4) If only compensation for part-time covered employment is used to calculate "final average compensation" or "highest average compensation" and if the member has both full- and part-time service, then the member must be granted proportional service credit for service in each calendar month of employment. The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by the average number of hours worked each month during the "final average compensation" or "highest average compensation" time period, but may not be greater than one.~~

~~(5) If compensation for both part-time and full-time covered employment is used to calculate the "final average compensation" or "highest average compensation", then the member must be granted proportional service credit for service in each calendar month of employment. The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by the average number of hours worked each month during the "final average compensation" or "highest average compensation" period, but may not be greater than one.~~

(3) Upon retirement, MPERA will adjust the service credit for members who work less than full time. The total service earned during the period of the "highest

average compensation" or "final average compensation" divided by three will define the service earned during the member's normal work year.

(a) The member must be granted proportional service credit for each fiscal year of employment on the basis of the member's normal work year.

(b) The proportion will be equal to the number of documented hours for which compensation during a calendar month was reported for the employee, divided by the average number of hours worked each month during the period of the "highest average compensation" or "final average compensation" times 12, but may not be greater than one.

AUTH: 19-2-403, MCA
IMP: 19-2-701, 19-3-904, 19-5-502, 19-6-502, 19-7-503, 19-8-603, 19-9-804, 19-13-704, MCA

STATEMENT OF REASONABLE NECESSITY: Current (3), (4), and (5) are difficult to understand and very repetitive. New (3) states the same concepts in much easier to understand language. The suggested change will enhance members' understanding of how their highest average compensation or final average compensation are impacted by working both part-time and full-time during their career.

2.43.407 (2.43.2106) NO DUPLICATION OF ~~CREDITS~~ SERVICE CREDIT

(1) A member employed in ~~more than one covered job~~ multiple jobs covered by the same retirement system during any given month may not earn more than one month service credit in ~~a covered~~ that retirement system.

(2) ~~A member may not qualify the same period of military or public service employment in more than one retirement system.~~ A member employed in multiple jobs covered by different retirement systems will earn appropriate service credit in each system.

~~(3) A member may not requalify credit from another retirement system, or qualify any period of military or public service employment, for any calendar month for which full service credit has already been granted.~~

AUTH: ~~19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: 19-2-703, 19-2-715, 19-3-508, 19-6-302, 19-7-307, 19-8-305, 19-9-401, 19-13-401, MCA

STATEMENT OF REASONABLE NECESSITY: Sections (1) and (2) are proposed to be amended to clarify for staff and members alike that although a member cannot receive duplicate service credit for the same work, they can receive service credit in two different systems if they simultaneously work two or more positions covered by different retirement systems. Currently, this area is confusing to all.

The repealed sections have been moved to New Rule VII, which specifically addresses limitations on the purchase of military service.

2.43.408 (2.43.2109) ~~CALCULATION~~ RECEIPT OF SERVICE CREDIT ON OR AFTER TERMINATION OF EMPLOYMENT (1) A member terminating employment shall ~~not be granted~~ receive service credit for lump sum payments of severance pay or paid leave, including vacation, personal, sick, or compensatory leave, received in the month following termination of employment unless the member elects to retire effective that month.

~~(2) A member who receives compensation in a month after termination of employment may elect to receive appropriate service credit for that month.~~ No member can receive both service credit and a retirement benefit for the same month.

AUTH: 19-2-403, MCA
IMP: 19-3-108, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

STATEMENT OF REASONABLE NECESSITY: Sections (1) and (2) currently duplicate each other in several respects. The proposed amendments eliminate the duplication and provide clarity. The board believes it better to express rule limitations in a positive rather than a negative manner. Various employers engage in different practices with respect to end of employment pay. "Paid leave" and "personal leave" are proposed to be added to the rule to cover any type of paid leave provided by the more than 500 employers who participate in a board-administered retirement system. Some of those employers have replaced sick and vacation leave with one type of leave, generally titled "personal leave."

2.43.410 (2.43.2302) ~~PROOF~~ DOCUMENTATION OF SERVICE (1) ~~When hours of employment are required for granting service credits, the board~~ MPERA ~~will utilize the~~ shall use employer certified records of employment to correct employer reports and to calculate ~~and grant~~ the cost of service ~~credits~~ credit granted to members.

(2) If~~, for any reason,~~ employer records are missing or alleged to be inaccurate, it shall be the member's responsibility to provide acceptable documentation to the board ~~which~~ that proves the amount of service ~~time~~ earned and salary paid to the member by the employer during the period in question.

(3) For the purposes of (2), the board will consider other documents, including but not limited to:

(a) pay stubs;

(b) copies of logs, time sheets, or other documents required to be kept by the employee for the employer;

(c) union agreement(s) in effect for the time period in question;

(d) any other binding agreement or contract in effect at that time;

(e) certified copy of a court order or out-of-court settlement agreement;

(f) social security records;

(g) W-2s; or

(h) other notarized or official documents which would support the member's claim.

~~(3)~~ (4) If the board ~~grants~~ approves a ~~petition~~ request for correction of employer records or a request to purchase service, ~~additional~~ membership service and service ~~time~~ credit will be granted only after payment of required contributions,

plus interest, into the retirement system ~~by the member~~.

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202,~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 3, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4,~~ 19-2-704, 19-3-315, 19-3-316, 19-5-402, 19-5-404, 19-6-402, 19-6-404, 19-7-403, 19-7-404, 19-8-502, 19-8-504, 19-9-703, 19-9-710, 19-13-601, 19-13-605, MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) is proposed to be amended to clarify that this rule pertains to the correction of information reported by employers to MPERA. These errors are generally found several years after the service occurred, usually when members are ready to retire or wish to purchase retroactive service. Proposed changes to (2) delete the use of an undefined term, "service time" and remove an unnecessary clause. Section (3) is needed to update and clarify the "acceptable documentation" a member can use to substantiate missing service. Section (4) is amended to reflect current practice and terminology. Petitions are no longer required. Both membership service and service credit are now granted following full payment by either the employee or the employer, or a combination of both.

2.43.418 (2.43.3401) RETIREMENT OPTIONS FOR ELECTED OFFICIALS OTHER THAN LEGISLATORS (1) Any elected or appointed official, other than a legislator, who becomes a member of PERS pursuant to 19-3-412, MCA, will receive service credit based upon the number of the member's compensated hours. Per diem or other benefits are not compensation.

~~(2) Legislators may elect membership in PERS.~~

~~(a) The legislator's application to join or to decline PERS membership must be filed with the board within 180 days of the first day of the legislator's term of office.~~

~~(i) A senator who is subsequently elected to serve as a representative, or a representative who is subsequently elected to serve as a senator, is considered to have started a new term of office and has a new 180-day election period.~~

~~(ii) A senator or representative whose district changes as a result of redistricting is not considered to have started a new term of office and does not have a new 180-day election period.~~

~~(b) A legislator may also exercise options available under 5-2-304 and 19-3-412, MCA.~~

~~(c) A legislator who becomes a member of PERS must pay regular contributions on all compensation for service in office.~~

~~(i) The legislator must pay contributions through payroll deduction during a legislative session.~~

~~(ii) The legislator may pay contributions directly to MPERA when the Legislature is not in session.~~

~~(d) The total contribution required for the term will be based on the current statutory salary prescribed in 5-2-301, MCA, less any previous contributions. The legislator must make all payments to MPERA no later than the last day of the~~

~~legislator's final term in that office.~~

~~(e) Service credit and membership service will be granted pursuant to 19-3-521, MCA.~~

~~(3)~~ (2) A retired PERS member who is elected or appointed to a state or local government public office covered by PERS may elect to become an active member of PERS or remain a retired member, with no limitation on the number of hours worked in the elected or appointed position.

~~(4)~~ (3) An active PERS member who is elected or appointed to a local government public office and works less than 960 hours a year in the elected position may decline membership in PERS with respect to the elected or appointed position.

~~(5) A member appointed to fill an unexpired term has the same rights and privileges as an elected official.~~

~~(6) An elected official whose term ends prior to the 15th of a month will be considered to have terminated covered employment effective the last day of the month preceding the end of the term.~~

~~(7)~~ (4) A PERS DBRP member who elects to purchase into PERS previous service as an elected or appointed official ~~in the PERS~~ must comply with 19-3-505, MCA, except the cost will not include interest for any contributions due on service prior to July 1, 1993.

AUTH: 19-2-403, MCA
IMP: 19-2-701, 19-2-702, 19-3-412, 19-3-1106, ~~19-5-301, 19-7-301,~~ MCA

STATEMENT OF REASONABLE NECESSITY: Section 19-3-412, MCA, recognizes that on occasion, for instance when an official resigns or dies while in office, elected officials may be appointed. Although current rule language also recognizes "appointed" elected officials in (5), the board prefers to use the term "appointed" within each section to better clarify that the rule applies to all elected officials, whether elected or appointed. This structure duplicates that in the statute. Section (6) is covered in statute. Statute should not be repeated in rule.

Section 5-2-304, MCA (2007), created significant differences between retirement options available to legislators and retirement options available to other elected officials. The board believes that separate rules addressing each group will result in better understanding of each group's retirement options. Therefore, (2) is proposed to be repealed.

2.43.420 (2.43.2317) ~~REQUALIFICATION~~ PURCHASE OF REFUNDED SERVICE OR SERVICE FROM ANOTHER MPERA-ADMINISTERED RETIREMENT SYSTEM (1) At any time prior to retirement, a member who is statutorily eligible to do so~~,~~ may elect to ~~qualify~~ purchase into ~~his~~ their current retirement system all or any portion of ~~his~~ their previously refunded ~~credits~~ service in ~~his current~~ that system or service from another ~~state~~ MPERA-administered retirement system.

(2) ~~The foregoing~~ Section (1) shall not be construed to allow the ~~transfer or~~ purchase of ~~credits~~ service between two retirement systems while the individual is a

member of both systems~~, nor shall it allow the transfer or purchase of service into a system by a former member of that system~~.

(3) In order to ~~qualify~~ purchase the previously refunded service, an eligible member must ~~initiate the action through~~ file a request to purchase service with MPERA identifying, in writing, the system to which ~~he~~ the member currently contributes~~, identifying, in writing, the system~~ and the period of employment which is to be ~~requalified~~ purchased.

(4) ~~The division will review~~ After reviewing the refund information in its files, ~~or submitted to it by the teachers' retirement system, and will~~ MPERA shall notify the member of the ~~exact~~ amount of ~~time which can be requalified~~ service eligible to be purchased and the ~~amount of employee contributions, plus interest, which must be deposited by the member in order to "buy back" the previously refunded~~ cost of that service ~~time~~.

~~(5) The member must have a letter of intent on file with the board for the buy back of previously refunded service credits, stating the amount of service credit to be requalified, the cost of the "buy back," and the amount of time over which the member will pay for such service.~~

~~(6) After full payment is made by the member, and if the service credit to be requalified was originally granted in a system other than the current system, the board will transfer from the previous system into the current system the actuarial equivalent of the employer's/state's share of granting such service credit in the current system.~~

AUTH: ~~19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: ~~19-3-509, 19-3-511, 19-3-605, 19-6-305, 19-7-309, 19-8-306, 19-9-405, 19-9-603, 19-13-404~~ 19-2-704, 19-2-709, 19-2-710, 19-2-715, MCA

STATEMENT OF REASONABLE NECESSITY: The board is changing "qualify" to "purchase" throughout its rules, similar to legislative changes in 2003. The term "qualify" could be confused with requirements that board-administered retirement systems must be "qualified" retirement plans. The term "purchase" better represents the process by which a member can increase the amount of their service credit.

"Credits" is an obsolete term that has been replaced with "service". Section 19-2-715, MCA, permits a member to purchase service refunded from their current retirement system and any other MPERA-administered system, but not any retirement system in the state.

There is no longer a "division." It is now the Montana Public Employee Retirement Administration (MPERA). Sections (3) and (4) are rewritten to include proper terms and to better clarify the process required to purchase refunded service.

Sections (5) and (6) are proposed to be repealed as the subject matter is now addressed in New Rule V.

2.43.421 (2.43.2315) CREDIT FOR SERVICE IN THE UNIFORMED SERVICES (1) If an actively employed member of ~~the public employees', judges', highway patrol, sheriffs', game wardens' and peace officers', municipal police, or firefighters' unified retirement systems~~ PERS, JRS, HPORS, SRS, GWPORS, MPORS, or FURS is called to duty for a period or periods of service in the uniformed services, the member may receive service credit and membership service within the member's retirement system for that time, provided the member:

(a) remains a member of the retirement system during the period of service in the uniformed services by leaving his or her accumulated contributions on deposit;

(b) complies with the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994, commonly known as USERRA or the Montana Military Service Employment Rights Act (MMSERA);

(c) complies with all Code of Federal Regulations implementing USERRA or all administrative rules implementing MMSERA; and

~~(c)~~ (d) is reemployed pursuant to USERRA or MMSERA.

(2) The member must ~~make up~~ complete payment of the member's contributions for the uniformed services related absence within three times the period of the member's uniformed service, starting upon return to employment, but not to exceed five years.

(3) The member may ~~make up~~ pay the employee contributions:

(a) on a pretax basis pursuant to 19-2-704, MCA;

(b) in a lump sum, including a direct transfer from an eligible retirement plan or individual retirement account; ~~or~~

(c) through installments on a posttax basis~~.~~ ; or

(d) any combination of (3)(a), (b), and (c).

(4) If the member ~~makes up~~ pays the employee's contributions, the member's employer must ~~make up~~ pay the employer's contributions ~~within the same time frame~~. Employer contributions may be due from the member's local government employer and the state.

(5) The member's, ~~and~~ the employer's, and the state's contributions are determined based on the compensation the member would have received had the member not been called to uniformed services duty.

~~(6) Neither the member nor the employer~~ No interest is charged ~~interest~~ on their respective contributions.

~~(7)~~ (6) A member ~~who is~~ making ~~additional~~ contributions under a service purchase contract at the time he or she is called to service in the uniformed services ~~may suspend~~ will have their payments ~~under the contract~~ suspended by MPERA until return to employment as required under USERRA or MMSERA.

~~(8)~~ (7) For purposes of this rule, service in the uniformed services is any service covered by USERRA or by MMSERA, including:

(a) service in the Army, Navy, Marine Corps, Air Force, Coast Guard, or Public Health Service Commissioned Corps;

(b) service in the reserve components of each of the services listed in ~~(8)~~(7)(a); ~~and~~

(c) ~~training or~~ service in the Army National Guard or the Air National Guard; and

(d) service in the Montana National Guard.

~~(9)~~ (8) For purposes of this rule, service includes:

(a) active duty;

(b) active duty for training;

(c) inactive duty for training;

(d) initial active duty training; and

(e) any period of time during which a member is absent from employment for the purpose of an examination to determine fitness to perform any of the above-listed duties.

(9) If the member dies while engaged in USERRA or MMSERA service, the balance of the service credit remaining to be purchased may be made from the member's estate, subject to the limitations of section 415 of the Internal Revenue Code.

(10) Regardless any provisions of state law to the contrary, the board will administer this rule in accordance with USERRA, and the federal department of labor regulations regarding USERRA.

AUTH: 19-3-403, MCA
IMP: 19-2-704, 19-2-707, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. The 2005 Legislature adopted the Montana Military Service Employment Rights Act (MMSERA) partly to provide USERRA-type rights to members of Montana's National Guard. Proposed amendments incorporate relevant provisions of the MMSERA for consistency purposes while recognizing that federal law controls when in conflict with state law.

Tax counsel has advised that relevant rules and regulations must be referenced, in addition to the USERRA and MMSERA statutes.

The term "make-up" is too general in nature and is proposed to be amended to clarify that contributions must be paid in order for the service to be purchased. Service purchase statutes permit an individual to use a combination of payment methods when purchasing any type of service, including USERRA and MMSERA related service. Depending on the retirement system involved, employer contributions include contributions from the employer, the state, and any local government employer.

The HEART Act (Heroes Earnings Assistance and Relief Tax Act of 2008) permits retirement systems to treat individuals who die or become disabled while performing qualified military service as if the individual resumed employment in accordance with USERRA on the day preceding death or disability, and terminated employment on the actual date of death or disability. Thus, MPERA has determined to permit service purchases of those individuals to be completed if so desired. The other proposed changes are for clarification purposes only and have no substantive impact on the rule.

2.43.422 (2.43.2308) MOST RECENT SERVICE PURCHASED FIRST

(1) When purchasing only a portion of a member's eligible military, federal volunteer, refunded, Montana public service, or other full-time public service, the member must first purchase the most recent service.

(2) A member who has refunded service more than once must purchase the most recent refund first.

~~(2)~~ (3) When purchasing or transferring a portion of a member's service credit from another retirement system, the member must first purchase the most recent service.

(4) When purchasing a portion of a member's retroactive service, the member must first purchase the most recent retroactive service.

AUTH: 19-2-403, MCA
IMP: 19-2-704, 19-2-715, 19-3-503, ~~19-3-504,~~ 19-3-505, ~~19-3-510,~~ 19-3-512, ~~19-3-513,~~ 19-3-515, ~~19-5-409,~~ 19-6-801, 19-6-803, ~~19-6-804,~~ ~~19-6-810,~~ 19-7-803, ~~19-7-804, 19-7-810,~~ 19-8-901, ~~19-8-903, 19-8-904,~~ ~~19-8-905,~~ 19-9-403, ~~19-9-411,~~ 19-13-403, ~~19-13-405,~~ MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) is intended to apply to all service purchases for which the actuarial cost of the service is required. "Montana public service" purchases are based on actuarial cost and should be included in (1). Sections (2) and (4) are proposed to ensure this rule addresses all possible service purchases, with the most recent of each type of service being purchased first.

2.43.423 (2.43.2303) ~~PURCHASE OF OTHER TYPES OF SERVICE~~ DOCUMENTATION OF AMOUNT OF SERVICE ELIGIBLE TO BE PURCHASED

(1) When military, U.S. government, federal volunteer, ~~full-time~~ Montana public employment, or other public employment related service is eligible to be purchased into a retirement system, the member is responsible for providing acceptable documentation to ~~the board~~ MPERA.

(2) The documents submitted by the member must be sufficient to prove to ~~the board~~ MPERA that the service is eligible to be purchased by the member.

(a) Documents used to prove military or federal volunteer service ~~shall~~ must include:

(i) military service records, including DD 214s, verified by the appropriate branch of service;

(ii) Peace Corps service records verified by the appropriate federal service agency; or

(iii) national service position records verified by the corporation for national and community service.

(b) Documents used to prove U.S. government, ~~or~~ Montana public employment, or other public employment ~~shall~~ must include employer certification of ~~the service and the compensation received~~:

(i) dates of employment, full- or part-time employment status, monthly hours of employment, compensation received, date and amount of refund, and current membership status; and

(ii) if the member was employed before the employer contracted to a public

retirement system, the name of the public retirement system and the date the employer contracted to join that system, if applicable.

~~(i)~~ (c) If employer-certified salary and employment documentation is not available from the employer, or if the member contests the certified documents, the member may petition the board to purchase the service based upon acceptable documentation listed in ARM ~~2.43.428~~ 2.43.410.

~~(2)~~ (3) ~~The board~~ MPERA shall review the documents presented to determine whether the service qualifies to be purchased. If the service can be purchased, MPERA will then calculate the cost of the service.

~~(3) The MPERA will calculate the cost of purchasing military, federal volunteer service, or other full-time public service employment into the member's current system.~~

~~(4) The eligible member must have a letter of intent on file with the board to purchase all, or a specific portion of the service, into the member's account. The letter of intent must state whether payment for the service will be made in a lump sum or in installment payments. Installment payments will be subject to additional interest as determined by the board and computed over the payment period.~~

AUTH: 19-2-403, MCA
IMP: 19-2-715, 19-3-503, 19-3-505, 19-3-510, 19-3-512, 19-3-515, 19-6-801, 19-6-803, 19-7-803, 19-8-901, 19-8-903, 19-9-403, 19-13-403, MCA

STATEMENT OF REASONABLE NECESSITY: Section 19-2-715(1), MCA, permits the purchase of "all or any portion" of a member's service in another MPERA-administered retirement system while 19-2-715(2), MCA, permits the purchase of "all or a portion of service credit for full-time service performed for the state or a political subdivision of the state." Section (1) addresses both types of service. Both service purchases are based on actuarial value. Therefore, there is no need to limit the purchases to "full-time" service. The board proposes to repeal the "full-time" service requirement for consistency purposes. Due to the number of inquiries from members wishing to purchase private employment into a board-administered retirement system, the board proposes to also clarify that only service related to public employment can be purchased into a board-administered retirement system.

The inclusion of DD 214s as an acceptable military service record informs members of the type of military record needed by MPERA and encourages use of the same documentation by most members. Similarly, (2)(b) is proposed to be amended to inform members of the type of information required in order for MPERA to certify that their public employment is eligible to be purchased into their retirement system. The listing will also assist employers with providing the necessary information as easily as possible.

The internal reference to ARM 2.43.428 is proposed to be amended to ARM 2.43.410 as the board is proposing to combine ARM 2.43.428 with ARM 2.43.410 and to then repeal ARM 2.43.428. The "board" is replaced with reference to

"MPERA" as MPERA is the board's staff and the entity that performs these functions.

Section (3) revises current (3) to provide that a cost statement will only be calculated if the service is eligible to be purchased. With that clarification, current (3) is no longer necessary. Section (4) is proposed to be repealed as it does not adequately address the service purchase process for either our members or for IRS qualification purposes. New Rule V addresses the written request to purchase service and the service purchase contract required prior to commencement of the purchase. The contract, as opposed to a mere letter of intent, should be required to establish the cost of the service and the payment method.

2.43.424 (2.43.2323) SERVICE CREDIT FOR PERIOD(S) OF ~~DISABILITY~~ ABSENCE DUE TO ILLNESS OR INJURY (1) A member of ~~the~~ PERS, HPORS, or GWPORS whose absence from service is compensated by workers' compensation, and who elects to leave ~~his~~ their accumulated contributions on deposit with the retirement system during that absence, may elect to ~~qualify~~ purchase up to five years of the period of absence for service credit~~s within 12 months of reinstatement to his position~~.

~~(2) In order to be eligible to qualify such a period of absence, a workers' compensation determination that the illness or injury was job-related must be made no later than one year after the member returns to his covered position.~~

~~(3) The member must file written application to qualify such service time with the board along with documentation of the period of time he was in receipt of workers' compensation benefits.~~

~~(4) The division will calculate the amount of contributions due based upon the amount the member would have normally received as salary had he not been absent from service using the member and employer contribution rates in effect during that period of time.~~

~~(5) Employee contributions, plus interest accruing from one year after the date the member returns to service, may be made in one lump sum or on an installment basis.~~

~~(6) The employer will be responsible for paying to the system the employer share of the contributions due, but may elect not to pay the accrued interest, if any, which is due, in which case the member must pay any interest due.~~

~~(7)~~ (2) No service credit will be granted to the member until the total contributions due are deposited into the system.

AUTH: ~~19-3-304~~ 19-2-403, MCA
IMP: 19-3-504, 19-6-810, 19-8-905, MCA

STATEMENT OF REASONABLE NECESSITY: "Disability" is a defined term used inappropriately in this context. A PERS, HPORS (as of 1999), and GWPORS (as of 1997) member absent from work due to an illness or injury intends to eventually return to work. Once the member returns to work, they can purchase service for the time during which they were absent. A person with a "disability" for board purposes cannot perform the work related to their position, will not usually be returning to

work, and is eligible to take a disability retirement.

MPERA is changing "qualify" to "purchase" throughout our rules, similar to legislative changes in 2003. The term "qualify" could be confused with requirements that retirement systems being administered by MPERA must be "qualified" retirement plans. The term "purchase" better represents the process by which a member can increase the amount of their service credit.

Service credit is a defined term that can mean one or multiple units of service credit. The term service "credits" is obsolete.

Sections (2) through (6) are proposed to be deleted as the process for purchasing and paying for this service is outlined in statute and in New Rule V and New Rule VI.

2.43.426 (2.43.4807) PART-PAID FIREFIGHTERS' SERVICE (1) Service credit~~s~~ earned by part-paid firefighters prior to July 1, 1981, will be computed and granted on the basis of the ratio of salary earned by the part-paid firefighter to the salary paid to a newly confirmed full-paid firefighter during the same time period.

(2) Service credit~~s~~ earned on or after July 1, 1981, shall be granted under the assumption that all part-paid firefighters work 15% time. Employer and part-paid employee contributions to ~~the firefighters unified retirement system~~ FURS will be based on an assumed salary for part-paid firefighters which is 15% of a newly confirmed full-paid firefighter's salary for the same time period.

(3) A part-paid firefighter will accrue ~~a~~ service credit of one month for each calendar month during which contributions are made; however, if and when ~~such~~ the part-paid service is qualified into another system, or if ~~such~~ the part-paid firefighter also has full-paid firefighter service credit~~s~~, each calendar month of part-paid service shall be credited as only .15 month of service.

AUTH: ~~19-13-202~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 13, part 4,~~ 19-13-301, MCA

STATEMENT OF REASONABLE NECESSITY: "Service credits" is an archaic term no longer used by MPERA or in retirement statutes. "Service credit" is defined in statute to include "periods of time for which the required contributions have been made to a retirement plan" and thus includes both singular and multiple units of service. The proposed change updates rule language and ensures consistency with statute.

Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. MPERA prefers to not use the word "such" when "the" suffices.

2.43.432 (2.43.2318) ~~"1-FOR-5"~~ "ONE-FOR-FIVE" ADDITIONAL SERVICE

(1) Subject to the requirements of each retirement system, a member with five or more years of membership service may purchase additional service credit. Members may purchase one full year of additional service for each five full years of

membership service ~~credited~~ in the retirement system. A member eligible to purchase additional service may purchase ~~full~~ months of service totaling 11 months or less.

~~(2) The cost will equal the actuarial rate for the respective system times the member's compensation for the immediately preceding 12 months. Each full month of additional service will cost 1/12 the cost of a full year.~~

~~(3)~~ (2) The board will include a member's additional service when calculating the amount of a benefit, but not for ~~initial~~ determining early or service retirement eligibility ~~or for early retirement~~, except in the following cases:

(a) ~~PERS, which requires~~ additional service purchased into PERS is required to be included when ~~calculating the~~ determining a member's early retirement reduction factor; and

(b) ~~the sheriffs' retirement system, which requires~~ additional service purchased into SRS is required to be ~~credited for the purpose of meeting~~ used when determining a member's retirement eligibility.

~~(4)~~ (3) A retired member who returns to active ~~PERS~~ membership in the system from which they retired may purchase ~~additional~~ one-for-five service after at least 12 months of active service. The amount of ~~additional~~ one-for-five service which may be purchased will be based on the member's total membership service in ~~PERS~~ the member's current retirement system.

AUTH: 19-2-403, ~~19-3-304, 19-7-201~~, MCA
IMP: 19-3-513, 19-3-902, 19-3-904, 19-3-906, 19-5-409, 19-6-804, ~~19-7-311,~~ 19-7-804, 19-8-904, 19-9-411, 19-13-405, MCA

STATEMENT OF REASONABLE NECESSITY: The Gregg Reference Manual requires that numbers ten and under be written as words rather than as numerals. Section (2) is being repealed as the subject matter is addressed in New Rule VI.

Section (2) is proposed to be rewritten for clarification purposes only, with no substantive impact on the rule. Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. Section (3) is amended to include all systems, not just PERS as a retiree of any MPERA-administered retirement system who returns to active employment covered by that retirement system can purchase one-for-five additional service. The term "additional" is replaced with "one-for-five" to avoid confusion with respect to which service can be purchased under this rule.

2.43.433 (2.43.2310) PURCHASE OF FULL-TIME SERVICE OR ONE-FOR-FIVE SERVICE BY PART-TIME MEMBERS (1) When a member employed on a part-time basis is eligible to purchase periods of full-time service or one-for-five service, the compensation used to calculate the cost to purchase ~~such~~ the full-time or one-for-five service will be the actual part-time compensation earned.

(2) If the member later retires with a full-time ~~FAS~~ final average compensation or highest average compensation, the member may either:

(a) have the amount of full-time service purchased under (1) ~~will be~~ proportionally reduced based upon the ~~proportion~~ ratio of time worked when the

service was purchased~~.~~ to full-time work; or

~~(3)~~ (b) ~~A member whose service is reduced under (2) above may elect to purchase service to equal full-time~~ retain the full-time service by paying the difference between the cost actually paid and the cost had the ~~member's salary~~ member been paid a full-time salary at the time of the purchase, plus 8% interest.

AUTH: ~~19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 3, 6, 7, 8, 9, 13~~ 19-2-704, 19-2-715, MCA

STATEMENT OF REASONABLE NECESSITY: One-for-five service is proposed to be added to this rule as it constitutes full-time service and is thus subject to the same requirements as full-time service. "FAS" is an obsolete term. It was the acronym for "final average salary," which has been replaced in statute with "final average compensation" or "highest average compensation," depending on the retirement system. The proposed amendments to (2) and (3) are for clarification purposes only and do not change the substantive nature of the rule.

2.43.437 (2.43.2316) RESERVE MILITARY SERVICE (1) ~~Members who meet the requirements of their retirement systems may purchase active and reserve military service. The cost will equal the actuarial rate for the respective system times the member's compensation for the immediately preceding 12 months. Each full month of additional service will cost 1/12 the cost of a full year.~~

~~(2) Highway patrol officers who did not elect GABA will pay a different cost for military service, whether active or reserve. The cost will equal the contributions for the year of service the member must complete to purchase the year of military service. For example, a member purchasing the first year of military service would pay an amount equal to the contributions for the member's 16th year of service. To purchase the 2nd, 3rd, and 4th years, the member would pay an amount equal to the contributions for the 17th, 18th, and 19th years of service, respectively. The member must also pay interest forward from the date the member is eligible to purchase the service to when payment is complete. The interest is the rate set by the board for member accounts.~~

~~(3)~~ The following requirements pertain to the purchase of membership service and service credit for the member's reserve military service in the armed forces, including the Army National Guard and the Air National Guard:

(a) ~~The time spent in reserve military service must be confirmed on appropriate documentation from the proper branch of the armed forces.~~

~~(b)~~ The member may not purchase any more reserve military service for a one year period than the amount of reserve military service that, when combined with all other earned or purchased service for that one year period, does not exceed one year of service credit. The reserve military service cannot be purchased if the member has received service credit for the same time period.

~~(c)~~ (b) The member may purchase reserve military service even if that period of service may be, or is, used to determine the member's right to, or amount of, military service retired pay under federal law, as provided by Title 10, chapter 1223 of the United States Code.

~~(d)~~ (c) The member may purchase reserve military time prior to separation from service in the reserves.

(2) The purchase of service pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, commonly known as USERRA or the Montana Military Service Employment Rights Act is addressed in ARM 2.43.421.

AUTH: 19-2-403, MCA
IMP: 19-3-503, 19-5-410, 19-6-801, 19-7-803, 19-8-901, 19-9-403, 19-13-403, MCA

STATEMENT OF REASONABLE NECESSITY: Sections (1) and (2) are addressed in statute. Rules should not duplicate statute. Subsection (3)(a) is now covered in ARM 2.43.423. Section (2) is needed to ensure members wishing to purchase USERRA or MMSERA are directed to the correct information.

2.43.440 (2.43.2309) SERVICE PURCHASES BY INACTIVE VESTED MEMBERS (1) An inactive vested member may purchase any ~~additional~~ service for which the member is eligible any time prior to retirement. ~~The appropriate statutes and rules will be followed to calculate the cost to purchase the service except the~~

(2) The inactive vested member's ~~last~~ most recent termination date will be considered the purchase request date for all service purchases other than refunded service, which is addressed in 19-2-603, MCA.

(a) The actuarial cost of the service purchase will be determined based on the member's age at the time of the purchase and the member's salary at the time of the member's most recent termination.

(b) Interest at an effective annual rate of 8% per year, compounded monthly, will be charged from ~~when~~ the ~~member last terminated~~ member's most recent termination date to when the member completes payment for the cost of the purchase.

(3) An inactive vested member who purchases service may not elect a retirement date prior to the date the service purchase is completed.

AUTH: 19-2-403, MCA
IMP: 19-2-603, 19-2-715, 19-2-908, 19-3-401, 19-5-301, 19-6-301, 19-7-301, 19-8-301, 19-9-301, 19-13-301, MCA

STATEMENT OF REASONABLE NECESSITY: Inactive vested members can purchase any available service for which they are eligible. "Additional service" is a defined term meaning "one-for-five" service. "One-for-five" service is the purchase of one year of additional service credit for each five years of membership service. "Additional" is proposed to be deleted to ensure that the rule applies to the purchase of any service (other than refunded service) and not just to "one-for-five" service. The purchase of refunded service by any member is specifically addressed in 19-2-603, MCA.

"Vested" is added to (2) because the entire rule applies only to inactive vested members, not inactive members in general. The term "most recent termination date"

is more accurate than "last termination date" as the most recent may not ultimately be the member's last termination date. For example, if an inactive vested member returns to employment, their last termination date will occur in the future, after the purchase of the service credit.

Service purchased pursuant to this rule may have occurred in the distant past. Use of the member's most recent salary as opposed to a potentially much smaller salary will limit any potential adverse actuarial impact to the system resulting from the service purchase. Finally, although members can retire retroactively, the member must have completed all service purchases prior to retiring.

2.43.451 (2.43.2319) PURCHASE OF "ONE-FOR-FIVE" ~~ADDITIONAL~~ SERVICE BY EMPLOYERS FOR REDUCTION IN FORCE EMPLOYEES ~~(1) Additional service purchased for members eligible for the retirement incentive program under 19-2-706, MCA, is limited to 3 years or restrictions otherwise in place in 19-3-513, MCA. The number of months of active duty military service or service from other public retirement systems purchased by a member after January 1, 1990, will reduce the amount of additional service for which the member is eligible to a combined total of no more than 60 months.~~

~~(2)~~ (1) Members ~~must~~ who are subject to a reduction in force and wish to apply for additional service under ~~the retirement incentive program~~ 19-2-706, MCA, must do so on forms provided by ~~the board~~ MPERA prior to ~~their voluntary~~ involuntary termination from covered employment ~~during the window period~~.

~~(3) Members involuntarily terminated must apply for additional service under the retirement incentive program on forms provided by the board on or after May 14, 1993, but prior to January 1, 1994. Members applying under 19-2-706, MCA, must apply after January 1, 1995, on forms provided by the board.~~

~~(4)~~ (2) ~~The board~~ MPERA will review the ~~applications~~ application and the member's file to determine the number of years of additional service ~~an employer may purchase for the member. The board will also determine the number of years of additional service which~~ a member is eligible to purchase ~~on their own behalf~~ and the required employer contributions for the purchase. ~~The board~~ MPERA may request any additional information it deems necessary from the employer or the member to complete this review.

~~(5)~~ (3) After review, ~~the board~~ MPERA will send the application to the employer to certify the following data:

(a) termination date;

(b) reason for termination (voluntary, reduction in force, or other);

(c) whether the member has taken advantage of other benefits provided as an alternative to this program; and

(d) whether the position was eliminated or reclassified.

~~(6)~~ (4) After receiving ~~certification~~ the requested certified information, ~~the board~~ MPERA will formally review and approve the request, if appropriate.

~~(7)~~ (5) ~~The board will base the~~ The cost of the one-for-five service will be based on the member's final 12 months of ~~service~~ salary, ending with the last full month of service. When calculating the cost for a member working part-time but whose final average ~~salary~~ compensation or highest average compensation will be

based on full-time service, the final 12-month salary will be proportionally adjusted. ~~The cost for purchasing the service will be billed to the member's former employer after approval of the application and the additional service will be utilized when computing the member's retirement benefit.~~

~~(8)~~ (6) A cost statement ~~to purchase the additional service will be sent to the~~ for the employer's portion of the cost of the one-for-five service will be sent to the member's former employer after the member terminates. The employer may pay the amount in full within one month of billing, or may select an installment plan of no more than ten years duration. ~~Under an installment plan, the maximum period is 10 years, and employers~~ Installment plans will include interest at an effective annual rate of 8%, compounded monthly.

(7) Employers who chose the installment plan option ~~may~~ must make annual ~~or monthly~~ payments no later than June of each year. ~~Installment plans will include interest at an effective annual rate of 8%, compounded monthly. The board~~

(a) MPERA will provide early payoff or pay down figures at the request of ~~employers~~ an employer.

(b) If the employer prepays on the installment plan, MPERA will recalculate the interest due following each payment, based on the remaining balance due. Prepayments will not relieve the employer of the obligation to make the next installment payment unless the amount owing is paid in full.

(8) The member will be billed for his or her portion of the cost of the one-for-five service.

AUTH: 19-2-403, ~~19-3-908,~~ MCA
IMP: 19-2-706, ~~19-3-908,~~ MCA

STATEMENT OF REASONABLE NECESSITY: Sections (1) and (3) are proposed to be repealed for multiple reasons. The retirement incentive program expired many years ago. The three year restriction mentioned in (1) is adequately addressed in statute. Statute should not be repeated in rule. The remainder of (3) is proposed to be repealed as the process for purchasing service is now addressed in New Rule V. Section (1) is amended to address the reduction in force program identified in 19-2-706, MCA, and to repeal reference to the expired retirement incentive program, which is under 19-3-908, MCA. The reduction in force program is for involuntarily terminated individuals while the retirement incentive program was for those who voluntarily terminated.

MPERA is the administrative arm of the board and is the actual entity that provides forms and makes initial determinations regarding eligibility to purchase any type of service and the cost of that service. Section (2) recognizes that the member's file must be reviewed in order to ascertain the amount of service for which the member is eligible, and the cost to the employer of that service. Similarly, (4) recognizes that it may not always be appropriate for MPERA to approve the service purchase request. There would be no need for review if MPERA could not reject a service purchase request.

Section (5) recognizes that cost is based on salary, not on service. The term "additional" service is replaced with "one-for-five" service to avoid confusion and to clarify that this rule applies to one-for-five service only. The term "final average salary" has been replaced in statute with "final average compensation" or "highest average compensation." The last sentence is proposed to be repealed as the subject matter is addressed more accurately in (6).

Section (6) recognizes that the employer bears the primary cost of the one-for-five service. The employee contributes to the cost only if the employee chooses to purchase more service than that purchased with the employer's contribution as permitted in (8). The remaining changes to (6) and (7) limit installment plan payments to yearly. Currently, employers do not make consistent payments, choosing instead to send in contributions as money becomes available. A set process is needed for better administration of the purchasing process, and to assist in determining the amount, including interest, remaining due from the employer.

2.43.452 (2.43.2609) RETURN TO EMPLOYMENT WITHIN SAME JURISDICTION (1) A PERS, GWPORS, SRS, FURS, or HPORS member who receives additional service under 19-2-706 ~~or 19-3-908~~, MCA, may again be employed within the same jurisdiction~~. However,~~ provided the member ~~may only~~ does not work for ~~less~~ more than 960 hours in a calendar year in any position covered by ~~the public employees'~~ a retirement system administered by MPERA ~~or 600 hours in a position covered by another Title 19, MCA, retirement system during any calendar year~~.

(a) A retired member must terminate employment and receive at least one monthly retirement benefit before returning to active service.

(b) An inactive member may return to active service within the same jurisdiction after a five-day break in service.

(2) A retired member who ~~receives the incentive, and~~ returns to employment under (1) ~~within the same jurisdiction,~~ must notify the board ~~within one week of employment~~ and ensure a working retiree report is filed with MPERA on a monthly basis. Service performed under ~~an independent~~ a contract that fails the tests set out in ARM 2.43.302 is employment subject to the ~~600-hour or the~~ 960-hour limitation and reporting requirements.

~~(3) Employers must report to the board the following information:~~

~~(a) a member who took advantage of the provisions of 19-2-706 or 19-3-908, MCA, and who returns to work within the same jurisdiction;~~

~~(b) current hours worked and amounts paid to the member; and~~

~~(c) each member's active service or employment after retirement with an independent contractor or as an independent contractor.~~

~~(4)~~ (3) When a member who has returned to work under (1) exceeds ~~works for~~ 960 ~~or more~~ hours in a calendar year ~~position covered by the public employees' retirement system or for 600 or more hours for another Title 19, MCA, retirement system, for the same jurisdiction~~, the member forfeits the additional service received. ~~The~~ Pursuant to 19-2-706, MCA, the board will ~~give employers a~~ credit ~~for~~ the ~~amount~~ member's employer with the employer's ~~they paid~~ contribution for the

additional service ~~minus~~ that exceeds the total retirement benefits paid to the member from retirement to forfeiture.

(a) If the employer paid the contributions owed MPERA in a lump sum, the employer will be credited with the difference between contributions paid and benefits received;

(b) If the employer is paying the contributions owed MPERA on an installment contract and the total retirement benefits received by the member:

(i) do not exceed the amount that has been paid on the installment contract, the employer will be credited ~~amount due will be~~ with the difference between contributions paid and benefits received ~~the total benefits paid from retirement to forfeiture.~~;

(ii) exceed the amount that has been paid on the installment contract but not the total amount due on the installment contract, the employer will be required to continue paying on the installment contract until the amount paid equals the retirement benefits received. Any outstanding balance due on the installment contract will continue to be charged ~~The board will charge~~ interest at ~~an effective annual rate of 8%~~ the actuarially-assumed rate of interest, compounded monthly~~, for any outstanding balance~~.

(c) If the total benefits received by the member exceed the total contributions owed by the employer, no adjustment will be made to the employer's contributions.

AUTH: 19-2-403, ~~19-3-908,~~ MCA
IMP: 19-2-706, ~~19-3-908,~~ MCA

STATEMENT OF REASONABLE NECESSITY: Section 19-3-908, MCA references a retirement incentive program that has expired.

The 600 hour limitation for a PERS, GWPORS, SRS, FURS, or HPORS working retiree who returns to a position covered by another retirement system was changed to 960 hours effective July 1, 2005. The limitation applies only to positions covered by another "retirement system." "Retirement system" is defined at 19-2-303(39), MCA as one of the retirement systems enumerated in 19-2-302, MCA. Current rule extends the limitation to "another Title 19, MCA, retirement system" which includes the Teachers' Retirement System and the Montana University System's Optional Retirement Program. Since neither of those systems is enumerated in 19-3-302, MCA, language is proposed that clarifies that the limitation applies only to MPERA-administered retirement systems.

A working retiree's and the working retiree's employer are required to report to MPERA on a monthly basis. The employer's report, if signed by the working retiree, meets both requirements. There is no reason to request additional notification from the working retiree.

ARM 2.43.302 sets out the criteria for determining whether a contract establishes an independent contractor or employee relationship. The contractor may be independent, but the contract itself is just a contract.

The process set out in (3) is addressed in ARM 2.43.506 and need not be repeated here.

Section (4) is revised to reference rather than repeat (1) for clarity purposes and to address the statutory changes mentioned above. The remaining new language in (4) is needed to address the amount of employer contributions that MPERA must retain and the amount returned to the employer if a member returns to employment in a position covered by an MPERA-administered retirement system. Statute does not address the amount of contributions to be credited to the employer if the employer makes payments under an installment contract.

2.43.502 (2.43.2602) APPLICATION PROCESS FOR DISABILITY BENEFITS (1) ~~Except as submitted by board members or the MPERA staff acting in those capacities, a request for the determination of disability benefit rights must be initiated in writing utilizing appropriate forms, and must be accompanied by all relevant information available to the requesting party.~~

~~(a) The requesting party may provide additional information for consideration until 10 days (20 days for medical information which must be reviewed by a medical doctor) prior to the next scheduled board meeting, or, if different, the board meeting at which the request will be considered.~~

~~(b) The board or MPERA may require the requesting party to provide specific information prior to board determination.~~

~~(2)~~ All forms necessary to apply for disability benefits may be obtained from ~~the~~ MPERA.

~~(3)~~ (2) ~~All~~ The following forms must be completed and submitted to ~~the~~ MPERA before the board will act on the application for disability benefits~~. A completed application must include the following forms~~:

(a) application for disability retirement and summary of disability;

(b) job duty questionnaire for disability retirement completed by the employer;

(c) attending physician's statement, including all medical records required to substantiate a disability claim; ~~and~~

(d) authorization to release information~~.~~; and

(e) a Health Insurance Portability and Accountability Act (HIPAA) authorization.

(3) The requesting party may provide additional medical information for consideration until 21 days prior to the next scheduled board meeting or, if different, the board meeting at which the request will be considered.

(4) The employer of the disability benefit applicant must define the essential elements of the member's position and show reasonable accommodation was attempted for the member's disabling condition(s) in compliance with the Americans with Disabilities Act (ADA), statutes and rules.

(5) "Total inability" for purposes of determining disability means the member is unable to perform the essential elements of the member's job duties even with reasonable accommodation required by the ADA.

~~(6) The factors the board will consider in determining total inability and the permanence of a disability will include, but are not limited to:~~

~~(a) availability and use of sick leave;~~

~~(b) vocational rehabilitation;~~
~~(c) medical treatment; and~~
~~(d) whether employment has been terminated.~~

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-2-406, 19-3-1002, 19-3-1005, 19-3-2141, 19-5-601, 19-6-601, 19-7-601, 19-8-701, 19-9-902, 19-13-802, MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) is proposed to be deleted as the information is not in chronological order with respect to the remaining sections, is too wordy, and contains dated information regarding timeframes for providing medical information. The information in (1)(a) has been updated and moved to (3). The 21 day requirement is consistent with the time frame in ARM 2.43.203(5)(a) and allows sufficient time for the board's contracted physician to review the information and provide an opinion based on that information.

Section (2) is rewritten to eliminate duplicate language and to clarify and update the information required by a member applying for a disability retirement. There has been confusion in the past regarding who should complete the job duty questionnaire. Completion by the employer as opposed to the employee helps ensure that the information provided is comprehensive and accurate.

Section (6) is proposed to be deleted as these factors have little to do with the definition of a disability, particularly in light of the Family Medical Leave Act and the Americans with Disabilities Act. Factors to be considered when determining disability are broad in nature, but specific with respect to individual members. A listing of factors to be considered runs the risk of being less than comprehensive in some instances and totally irrelevant in others.

2.43.503 (2.43.2601) APPLICATION PROCESS FOR SERVICE RETIREMENT (1) In order to receive the first retirement benefit in a timely manner, prospective retirees must request an estimate of retirement benefits no less than 30 days prior to a member's anticipated retirement date.

(2) The request must include the retiring member's:

(a) full name;

(b) social security number;

(c) mailing address;

(d) date of birth;

(e) name, social security number, and date of birth of beneficiary, if any;

(f) ~~beneficiary's~~ name, social security number, and date of birth of contingent annuitant(s), if any;

~~(g) beneficiary's date of birth;~~ and

~~(h)~~ (g) anticipated date of retirement.

(3) ~~The division~~ Upon request, MPERA will ~~compute~~ calculate retirement benefit estimates ~~of retirement benefits~~ for the eligible retiring member ~~(~~and ~~his~~ their ~~beneficiary~~ contingent annuitant(s) under any options which are statutorily available ~~to members of some systems)~~ and will mail those estimates along with complete

retirement information and an application for service retirement to the member.

(4) Based on the retirement estimates and information provided by ~~the division~~ MPERA, the member ~~must~~ may elect ~~a regular, early, or optional retirement~~ whether to retire and if so, the statutorily-allowed retirement option the member prefers ~~(if eligible) and~~. A member wishing to retire must return ~~the~~ a signed retirement application ~~to the board~~ to MPERA, along with certified copies of ~~his and his beneficiary's~~ the member's and the member's contingent annuitant's birth certificates or other acceptable proof of age, before benefits will be paid.

(5) The option factors used in the calculation of the option 2 or option 3 retirement benefit pursuant to ARM 2.43.304 will be based on the nearest whole ages of the member and contingent annuitant.

(6) Retirement applications must be received by the 14th of any month in order for the initial retirement benefit to be paid that month.

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202,~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 3, part 9, part 11, Ch. 5, part 5, part 7, Ch. 6, part 5, Ch. 7, part 5, part 7, Ch. 8, part 6, part 8, Ch. 9, part 8, Ch. 13, part 7~~ 19-2-403, 19-2-801, 19-3-1210, 19-3-1501, 19-5-701, 19-5-802, 19-6-903, 19-7-503, 19-7-1001, 19-8-801, 19-8-1002, 19-9-1102, 19-13-903, MCA

STATEMENT OF REASONABLE NECESSITY: Subsections (2)(e), (f), and (g) are reordered to list information required for both beneficiaries and contingent annuitants. The rule currently appears to address both under the term "beneficiaries," which is confusing at best. A member who selects a straight life annuity (option 1) must name at least one beneficiary to receive any remaining accumulated contributions upon the member's death. A member who elects a joint and survivor annuity (options 2 and 3) or an annuity for a period certain (option 4) must name at least one contingent annuitant to receive the continuing benefit following the member's death. Social security numbers and dates of birth help MPERA find the beneficiary/contingent annuitant if no current address exists and assist in ensuring the correct identity of that individual.

Sections (3) and (4) are proposed to be amended for several reasons. There is no longer a Public Employees' Retirement Division (PERD or division). It is now the Montana Public Employee Retirement Administration (MPERA). And, as mentioned in the preceding paragraph, a member who elects an annuity as their benefit option must name a contingent annuitant, not a beneficiary. In (4), "must" is changed to "may" and the sentence rewritten as members may elect to take a lump-sum withdrawal of their accumulated contributions rather than an ongoing monthly retirement benefit. "Certified" copies of birth certificates are required by ARM 2.43.504 as part of MPERA's ongoing efforts to eliminate fraud wherever possible. This rule should be consistent with ARM 2.43.504. The remaining changes are for clarification only and have no substantive impact on the rule.

New (5) and (6) document long-time MPERA practices for the benefit of retirement

system members and to ensure MPERA has the authority to continue these practices. Use of anything other than the member's nearest whole age would result in endless actuarial tables providing no significant differences. Applications received after the 14th of the month cannot be verified and entered into the "computer" in time to permit receipt of a retirement benefit for that month.

2.43.504 (2.43.2603) ACCEPTABLE PROOF OF DATE OF BIRTH (1) A certified copy of a birth certificate or state birth registration shall be proof of the date of birth for the purpose of completing an application for retirement benefits.

(2) If a birth certificate or state birth registration is not available, the board will accept a driver's license and one of the following~~, in order of preference,~~ as proof of date of birth:

(a) baptismal record;
(b) selective service record;
(c) armed forces discharge;
(d) passport;
(e) school record;
(f) ~~life insurance policy~~ tribal identification or registration;
(g) naturalization record;
(h) alien registration record; or
(i) ~~such~~ other records ~~as may be~~ submitted by the member which are acceptable to ~~the board~~ MPERA.

(3) If the birth certificate is in a language other than English, MPERA may request one of the alternative means of identification listed in (2).

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: ~~Title 19, Ch. 3, parts 9 and 11, Ch. 5, parts 5 and 7, Ch. 6, part 5, Ch. 7, parts 5 and 7, Ch. 8, parts 6 and 8, Ch. 9, part 8, Ch. 13, part 7~~ 19-2-403, MCA

STATEMENT OF REASONABLE NECESSITY: A Montana driver's license is recognized nationally as a secure form of identification, perhaps even better than a passport. However, not all members or contingent annuitants possess a Montana driver's license. The board believes that presentation of a driver's license along with one other recognized form of identification to be adequate proof of a member or contingent annuitant's identity and date of birth.

The board does not believe life insurance policies have adequate safeguards to ensure age and identity and therefore proposes to repeal that option. Tribal governments have very stringent identification and registration requirements. Many tribal members use their registration as their primary form of identification. It provides adequate reassurance of both identity and date of birth.

MPERA has received numerous foreign birth certificates. If the certificate is not in English, MPERA may need to request additional proof of identity.

As the board's administrative arm, MPERA is the entity that accepts identification records for retirement purposes.

2.43.505 (2.43.3403) INVOLUNTARY RETIREMENT (1) ~~An elected official, who is a member of either the judges' or sheriffs' retirement systems due to the elected office he holds, is eligible for an involuntary retirement allowance only when he runs for and loses an election which would have continued him in a covered office, provided the requisite number of years of total service have been performed.~~

~~(2)~~ If an elected official, including a legislator, chooses not to run, runs for another office ~~which~~ that is not covered by that retirement system, or is otherwise removed from office for cause, ~~he~~ that official shall not be eligible for an involuntary retirement allowance.

~~(3) A member of the sheriffs' retirement system who does not hold elected office is eligible for an involuntary retirement allowance only upon termination from active duty due to a reduction in force.~~

AUTH: ~~19-5-201, 19-7-201~~ 19-2-403, MCA
IMP: ~~19-5-503, 19-7-504~~ 19-2-706, MCA

STATEMENT OF REASONABLE NECESSITY: Judges' Retirement System statutes specifically address involuntary retirement. The SRS statute was repealed in 1997. Therefore, sections (1) and (3) are no longer necessary. The rule need address only elected officials who are members of PERS.

2.43.506 (2.43.2608) RETURN TO COVERED EMPLOYMENT BY PERS, SRS, OR FURS RETIREE – REPORT (1) ~~A~~ An employer who employs a retired PERS member ~~who is employed, after retirement,~~ in a position covered by ~~the~~ PERS or in "employment covered by the retirement system" as specified in 19-3-1106, MCA, must ~~be reported~~ submit a certification report to ~~the~~ MPERA ~~on a monthly basis~~ for each payroll period during which a retired PERS member is employed. This ~~reporting~~ certification requirement does not apply to a PERS retiree who is elected to a state or local public office and chooses to not become an active member of PERS.

(2) ~~A~~ An employer who employs a retired ~~sheriffs' retirement system (SRS)~~ SRS member ~~who is employed, after retirement,~~ in a position covered by ~~the~~ SRS must ~~be reported~~ submit a certification report to ~~the~~ MPERA ~~on a monthly basis~~ for each payroll period during which a retired SRS member is employed.

(3) An employer who employs a retired FURS member in a position covered by FURS must submit a certification report to MPERA for each payroll period during which a retired FURS member is employed. ~~The MPERA must receive the report by the 15th of the month following the month for which employment is being reported.~~

(4) The certification report must include the following information for each individual referred to in (1) through (3):

(a) ~~working retiree's~~ name and social security number;

(b) ~~month and year~~ pay period being reported;

(c) name and address of ~~working retiree's~~ employer;

(d) the daily and total number of regular, overtime, holiday, sick leave, and

vacation or annual leave hours worked for the employer; ~~and~~

(e) gross compensation received from the employer; and

(f) the employer's verification that the employer provided the working retiree with the information submitted to MPERA.

(5) The ~~report must be signed by both the~~ employer ~~and the working retiree~~ must submit the certification report by filing it with MPERA no later than ten working days after each regularly occurring payday.

(6) A separate certification report must be filed with MPERA for each ~~employment~~ position held by the working retiree.

AUTH: 19-2-403, MCA
IMP: 19-3-1104, 19-3-1106, 19-7-1101, 19-13-301, MCA

STATEMENT OF REASONABLE NECESSITY: Working retirees are of great concern to the board. As baby boomers reach retirement age and available workers decrease, more retirees will either volunteer or be asked to return to assist their previous employer. When working retirees return to employment, whether as employees, leased employees, or through private personnel services companies, they take positions from "new" employees who would be contributing to the retirement system. This reduction in contributions will have a negative actuarial impact on the retirement systems if allowed to go unchecked.

Proposed amendments to (1) address 19-3-1106(6), MCA (2007), that added the duty to report working retirees who perform work through professional employer arrangements, leasing arrangements, and temporary service contractors. Proposed (3) addresses 19-13-301, MCA (2007) that caps working FURS retirees at 480 hours. Strict compliance with these statutes is required to minimize the actuarial impact of working retirees. Therefore, all retirees must be reported to MPERA to assist MPERA in tracking the number of hours worked and identifying when the member must either temporarily lose their retirement benefit or be returned to active employment.

All sections are proposed to be amended to address new requirements associated with MPERA's electronic and web reporting processes. Changes include information reported and certified by the employer and the timing of the reports. Reporting by payroll period rather than monthly will ensure MPERA has the most up-to-date information to better track hours worked by working retirees.

Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. The remaining proposed changes are for clarification purposes only and have no substantive impact on the rule.

2.43.508 (2.43.2701) PERIODIC MEDICAL REVIEW OF DISABILITY BENEFIT RECIPIENTS (1) The medical status of each member receiving a disability benefit will be reviewed annually by the board to determine whether the member continues to be disabled, unless:

(a) the board determines reviews are unnecessary and may be discontinued;

(b) the board determines more frequent reviews are warranted by the nature of the disability;

(c) the board converts the disability retirement benefit of a participant in the defined benefit retirement plan to a service retirement benefit; or

(d) a participant in the defined contribution retirement plan receiving a disability benefit reaches ~~60~~ 65 years of age.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-2-408, 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

STATEMENT OF REASONABLE NECESSITY: The Age Discrimination in Employment Act requires that a defined contribution member receive a disability benefit until age 65. The proposed amendment reflects this requirement and is consistent with 19-3-2141, MCA.

2.43.509 (2.43.2702) PERIODIC MEDICAL REVIEW OF DISABILITY BENEFIT RECIPIENTS -- INITIAL NOTICE TO MEMBER (1) ~~The~~ MPERA will send written notification of medical review to a member receiving a disability benefit which is subject to review. The notice will be sent to the member at the most recent address provided and will inform the member of:

(a) the date by which medical information and records must be ~~received~~ filed; and

(b) any specific medical tests or diagnosis required for the review.

(2) The member will be required to have the results of a current medical examination, including any specifically required tests or diagnosis, ~~submitted~~ filed directly ~~to the~~ with MPERA by the examining medical authority(ies) within 60 calendar days of initial notification. The medical examination must be performed by the member's treating physician or other competent medical authority. To be considered current, the date of a medical examination must be no earlier than six months prior to ~~receipt~~ the date filed with ~~by the~~ MPERA.

(3) ~~Disabled retirees of the highway patrol officers', sheriffs', game wardens' and peace officers', municipal police officers' and firefighters' unified retirement systems~~ Members receiving a disability benefit who are required by MPERA or the board to obtain tests pursuant to (2) will be reimbursed for travel necessary to obtain the ~~required~~ MPERA-required examinations or tests provided current medical examinations or tests are not otherwise available. Reimbursement for lodging, meals, and mileage will be at the rates established for state employees in Title 2, chapter 18, MCA. ~~The actual cost of lodging will be reimbursed up to a maximum of $40 per day.~~

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

STATEMENT OF REASONABLE NECESSITY: The terms "received," "submitted," and "receipt" should be replaced with the term "filed" as the medical tests and

diagnosis must be filed with MPERA by a certain date. Thus, the term "filed" as defined in ARM 2.43.301 is applicable to this situation. Minor rewrites were required in order to be grammatically correct.

Currently PERS and JRS members are not reimbursed for travel expenses associated with board- or MPERA-required medical examinations. The board has determined there is no logical reason to not reimburse the member of any board-administered retirement system for those expenses. Lodging has been reimbursed at a maximum of $40 per day for many years. This amount is insufficient. Rather than change the rule to keep up with costs, the board believes reimbursement at the state's lodging rate is a logical alternative.

2.43.510 (2.43.2703) ~~INITIAL AGENCY~~ PERIODIC REVIEW OF MEDICAL EVIDENCE -- NOTICE OF ADDITIONAL EVIDENCE REQUIRED (1) The board's medical consultant and disability claims examiner will review all medical records previously submitted and those requested for the current period and submit interpretations and recommendations as to the current disability status of the member.

(2) If ~~the~~ MPERA determines the records submitted by the member's treating physician in response to the initial notice of review are not current or are otherwise inadequate to complete a review, ~~the~~ MPERA will send written notice to the member of the specific ~~additional~~ examinations, diagnoses, or tests necessary for adequate review of the disabling condition. When appropriate, the type of medical authority to conduct the necessary tests or examination will be specified or a particular physician may be appointed to conduct the required examinations or tests.

(3) The member will be allowed 60 days from the date of notification to complete the required examinations or tests and have the results sent directly to ~~the~~ MPERA by the examining physician.

(4) If the member chooses not to provide additional medical evidence administratively determined as necessary, the previous medical evidence ~~submitted~~ filed will be presented to the board along with staff recommendations regarding continuing disability of the member.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

STATEMENT OF REASONABLE NECESSITY: MPERA recently contracted with a new doctor to conduct reviews of disability claims. That doctor would like to have a diagnosis included with the member's medical examination. The board believes the treating physician's diagnosis will be helpful to both the board and its doctor when reviewing disability claims. "Additional" is deleted because the information sought may be the first examination.

The term "submitted" should be replaced with the term "filed" as the report must be filed with MPERA by a certain date. Thus, the term "filed" as defined in ARM 2.43.301 is applicable to this situation.

2.43.511 (2.43.2704) FAILURE TO RESPOND -- SECOND NOTICE (1) A member who fails to ~~submit~~ file all medical information as required in the notice will be sent a ~~"~~second notice~~"~~ by certified mail, return receipt requested. The second notice will inform the member of:

(a) any specific medical tests ~~or diagnosis~~ and diagnoses required by the board for the review; and

(b) the date on which disability benefits will be suspended if the member does not provide the medical evidence.

(2) The member may request an extension to accommodate scheduled appointments. The written request justifying the need for additional time must be ~~received by the~~ filed with MPERA at least 15 days prior to the end of the time period. Any requests for extensions in excess of 30 days will not be approved.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

STATEMENT OF REASONABLE NECESSITY: The term "submit" should be replaced with the term "file" as the report must be filed with MPERA by a certain date. Thus, the term "filed" as defined in ARM 2.43.301 is applicable to this situation. "Diagnosis" is proposed to be amended to recognize that some disabled members may have more than one diagnosis.

2.43.514 (2.43.2707) CANCELLATION OF DISABILITY BENEFITS DUE TO CHANGE OF MEDICAL STATUS (1) If the board determines the medical information available, including that provided by the member, does not demonstrate continuing disability, the monthly disability benefit will be cancelled.

(2) The effective date of cancellation for members of ~~public employees', judges'~~ PERS and JRS and elected officials of ~~the sheriffs' retirement systems~~ SRS will be the first day of the second month following board action. For example, ~~(e.g.~~ board action on January 28 to cancel disability benefits ~~on January 28,~~ would result in cancellation of the March benefit~~)~~.

(3) Except in the case of a member of ~~the judges' retirement system~~ JRS or an elected official ~~of the public employees' and sheriffs' retirement systems~~ in PERS or SRS, the member's former employer will be notified of the member's eligibility for reinstatement to service.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA
IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

STATEMENT OF REASONABLE NECESSITY: The example provided is written incorrectly. The board action, not the cancellation, would occur on January 28. Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

2.43.515 (2.43.2711) APPEAL OF CANCELLATION OF BENEFITS (1) A member may appeal the cancellation of disability benefits only by requesting an administrative hearing (contested case) in writing within 30 days of the date of written notice of cancellation ~~after the effective date of the cancellation~~.

AUTH: 19-2-403, 19-3-2104, 19-3-2141, MCA;
IMP: 19-3-1015, 19-3-2141, 19-5-612, 19-6-612, 19-7-612, 19-8-712, 19-9-904, 19-13-804, MCA

STATEMENT OF REASONABLE NECESSITY: The effective date of the cancellation varies from system to system and employer to employer. Therefore, it is difficult for the member, MPERA, and the board to know when the 30 day appeal time commences. ARM 2.43.203 uses the date of written notification to start the appeal time. The board believes this to be a workable solution that will give consistency to its processes. Please note that if the board unilaterally converts a disabled member's disability to a service retirement benefit under 19-3-1015, MCA, that statute provides the member 60 days to appeal.

2.43.603 (2.43.2901) REFUNDS TO MEMBERS (1) Any contributing member ~~whose service has been discontinued~~ who has terminated employment for any reason other than death or retirement~~,~~ may elect to withdraw ~~his~~ their accumulated contributions provided:

(a) ~~he~~ the member makes written request on the most recent application provided by ~~the PERD,~~ MPERA; ~~and~~

(b) ~~all~~ the refund ~~applications must be~~ application is completed by both the ~~employee~~ member and the employer, ~~notarized,~~ and forwarded to ~~the PERD~~ MPERA by the employer~~, and~~;

(c) the contribution and service credit from the report on which the member last appears is credited to ~~his~~ the member's account~~, and~~;

(d) the employer's report indicates the member has terminated;

~~(d)~~ (e) the member ~~is~~ will not ~~returning~~ return to covered employment for at least 30 days; and

(f) the member does not have an established agreement for reemployment in a position covered by the retirement system providing the refund.

(2) Correctly completed and submitted refund applications will be processed within three weeks after the member's final contributions are credited to ~~his~~ the member's account, including termination payments of sick and annual leave.

(3) ~~The employer portion of the refund application need not be completed if~~ An alternative refund form is available from MPERA for the member who has terminated and whose member's account has been inactive for more than three months.

(4) ~~Additional contributions will be refunded no more than once each 6 months or upon termination.~~

~~(5) Request for additional contribution refund must include the notarized signature of the member, but the employer portion need not be completed.~~

~~(6) Refunds of total additional contributions must include accrued interest.~~

~~(7)~~ No partial refunds of normal contributions ~~or accumulated contributions~~

will be made.

~~(8) Refund of employer contributions will not be made except where it can be documented, to the division's satisfaction, that an error has been made in the employer contribution paid.~~

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: 19-2-303, 19-2-602 ~~19-3-703~~, 19-5-403, 19-6-403, ~~19-7-304, 19-8-503, 19-9-304, 19-9-602, 19-13-602~~, MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) pertains to a retirement system member who has quit their job but not yet terminated membership in the retirement system. Therefore, under 19-2-303, MCA, the correct language is "terminated employment." Refund applications include a "Special Tax Notice" whose contents change to comply with federal law. Use of the most recent application will ensure the refunding member is aware of the most recent tax implications associated with the refund. The board has determined to no longer require a notarized signature as the notarization was used to merely document the signature, not to verify the truth of anything asserted on the refund application. There is no longer a Public Employees' Retirement Division (PERD or division). It is now the Montana Public Employee Retirement Administration (MPERA).

Subsections (1)(d) and (f) are added and subsection (e) is amended to address specific termination requirements that will ensure the board's retirement plans remain qualified under the internal revenue code. According to IRS rules and regulations, a member with an agreement to return to work has not terminated employment and is not eligible to receive a retirement benefit.

Section (3) is proposed to be amended because the board now provides a separate refund application for those members who terminated employment more than three months prior to applying for a refund. A separate form is easier for the member to understand and reduces the risk of error.

Sections (4) through (6), (8), and part of (7) are no longer applicable as the board has not accepted "additional contributions" from members for many years. The other proposed changes are for clarification purposes only and have no substantive impact on the rule.

2.43.604 (2.43.2902) DEATH PAYMENTS, SURVIVOR BENEFITS, AND OPTIONAL RETIREMENT BENEFITS (1) Upon the death of ~~a~~ an active or inactive member, the member's designated beneficiary~~,~~ or statutory beneficiary~~, or contingent annuitant~~ must submit a ~~certificate of~~ certified copy of the member's death certificate and a completed ~~MPERA~~ death claim form to ~~the~~ MPERA.

(2) Upon the death of a retired member receiving an option 1 benefit, the member's designated beneficiary, or personal representative if no designated beneficiary, must submit a certified copy of the member's death certificate. Completed death claim forms may be required if there are multiple designated

beneficiaries or a lump sum payment remains.

(3) Upon the death of a retired member receiving an option 2, 3, or 4 benefit, a contingent annuitant must submit a certified copy of the member's death certificate to MPERA.

~~(2)~~ (4) If ~~the~~ all designated or statutory ~~beneficiary predeceases~~ beneficiaries predecease the member, the member's ~~estate~~ personal representative or next of kin as defined in 19-2-802, MCA, must ~~file~~ submit the required documents ~~required in (1)~~.

~~(3)~~ (5) If ~~the~~ all designated or statutory ~~beneficiary renounces~~ beneficiaries renounce their interest in their payment rights, a contingent beneficiary or other identified payment recipient may submit the required documents ~~required in (1)~~.

~~(4)~~ (6) Upon receipt of the required documents ~~required in (1)~~, MPERA ~~staff~~ will advise the beneficiary or contingent annuitant of the benefits available.

~~(5)~~ (7) ~~Death claim forms are available at the~~ Contact MPERA ~~office~~ to obtain a death claim form.

AUTH: 19-2-403, MCA
IMP: 19-2-801, 19-3-1201, 19-5-801, 19-5-802, 19-6-901, 19-6-902, 19-6-903, 19-7-901, 19-8-1001, 19-8-1002, 19-8-1003, 19-9-1101, 19-9-1102, 19-13-902, 19-13-903, MCA

STATEMENT OF REASONABLE NECESSITY: Previously this rule lumped active, inactive, and retired members together. However, active and inactive members do not have a contingent annuitant as a contingent annuitant is named by a retiree to receive the "survivor" portion of the member's joint and survivor annuity (options 2, 3, and 4). Members who elect option 4 may name more than one contingent annuitant. Active members and retirees who elect a single life annuity (option 1) may have one or more designated beneficiaries (or statutory beneficiaries if the member is in a public safety retirement system).

The board has determined to accept only certified copies of birth and death certificates to lessen the possibility of fraud.

Section (4) is proposed to be amended to recognize that the "estate" cannot file documents. However, the member's personal representative can do so on behalf of the estate. The term "submitted" should be replaced with the term "filed" as the report must be filed with MPERA by a certain date. Thus, the term "filed" as defined in ARM 2.43.301 is applicable to this situation.

The other proposed changes are for clarification purposes only and have no substantive impact on the rule.

2.43.607 (2.43.2903) PAYMENT TO AN ESTATE (1) Payment due to an estate will be made upon receipt of a certified copy of ~~one of the following:~~

~~(a)~~ a personal representative's letters testamentary or letters of administration. MPERA will also make ~~a~~ payment to an estate upon receipt of certified documentation recognized in Title 72, MCA, as proof that payment to an

estate should be made. ~~which are issued to a person named personal representative of an estate;~~

~~(b) an order admitting a will to probate as evidence of title;~~

~~(c) an affidavit filed with the county court under the Small Estates Provisions of the Uniform Probate Code, Title 72; or~~

~~(d) a judgment to declare heirship under the provisions of the Uniform Probate Code, Title 72.~~

AUTH: ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202~~ 19-2-403, MCA
IMP: ~~19-3-1302, Title 19, Ch. 5, part 6, Ch. 6, part 6, Ch. 7, part 6, Ch.8, part 7~~ 19-2-802, ~~19-9-912~~ 19-9-1102, 19-13-903, MCA

STATEMENT OF REASONABLE NECESSITY: Title 72, MCA, contains many different methods to show proof that payment should be made to an estate. The board believes it best to list the most common, then to defer to Title 72, MCA, rather than attempt to create a list of methods that may not be inclusive of all methods recognized in Title 72, MCA, or that may provide methods that are not permitted in Title 72, MCA.

2.43.611 (2.43.4603) MUNICIPAL POLICE OFFICERS' ~~SUPPLEMENTAL BENEFITS AND ALLOWANCE ADJUSTMENTS~~ MINIMUM BENEFIT ADJUSTMENTS (1) When a city belonging to ~~the municipal police officers' retirement system~~ MPORS has not negotiated a salary agreement with ~~their~~ its actively employed police officers by July 1 of any year, the following actions will be taken by ~~the public employees' retirement division~~ MPERA:

(a) ~~Supplemental benefits and allowance adjustments~~ Retirement benefits will be paid to non-GABA retirees from that city ~~which will be calculated using the base salary of a newly confirmed police officer of that city during the most recently reported fiscal year for which there was a negotiated salary agreement in effect.~~ using the most recent base salary for a newly confirmed police officer negotiated by the city and reported to MPERA.

(b) ~~By August 1 a report will be sent to the state auditor stating the supplemental benefits payable from the appropriate insurance premium tax funds based upon information available from cities as of that date.~~

~~(c) As~~ When a salary ~~agreements are~~ is negotiated by ~~cities~~ the city and ~~the retirement division~~ MPERA is notified of ~~changes~~ a change in base pay for the city's newly confirmed police officers, ~~supplemental~~ retirement benefits will be recalculated and adjustments paid retroactively to ~~retired members~~ non-GABA retirees from ~~those cities~~ that city.

~~(d)~~ (c) Updated reports will be sent to the state auditor certifying the ~~additional~~ increased ~~supplemental~~ retirement benefits payable from insurance premium tax funds during a given fiscal year as those ~~additional~~ amounts become known.

AUTH: 19-2-403 ~~19-9-201~~, MCA
IMP: 19-9-1007, ~~19-9-1011,~~ MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. There is no longer a Public Employees' Retirement Division (PERD or division). It is now the Montana Public Employee Retirement Administration (MPERA). Part of the current rule is written in the singular "city" and part in the plural "cities". MPERA proposes to use the singular case throughout the rule for consistency and clarity purposes.

The retirement benefit to which this rule applies is for members of MPORS who became active prior to July 1, 1997 and did not choose to participate in the guaranteed annual benefit adjustment (GABA) provided for in 19-9-1009 and 19-9-1010, MCA. Those individuals receive a retirement benefit increase based on the salary paid by their last employer to newly confirmed police officers. Prior to GABA, this increase was known as a supplemental benefit or benefit allowance adjustment. Once GABA was enacted, this method of calculating a member's benefit increase became an alternate adjustment to the member's retirement benefit. Proposed language recognizes this change and results in a rule consistent with current statute.

Subsection (1)(b) is proposed to be repealed as it mirrors statute and is not necessary.

2.43.617 (2.43.2607) PAYMENT OF ESTIMATED BENEFITS (1) ~~The division~~ MPERA shall pay estimated retirement benefits to qualified members for up to three months. To qualify for estimated retirement benefits, a member must ~~file~~ submit an application for early or normal service retirement, terminate active service, and meet retirement age and membership service requirements.

(2) ~~The division~~ MPERA shall pay estimated disability retirement benefits for up to three months to members granted disability retirement status by the board.

(3) ~~The division~~ MPERA shall obtain from the employer all documentation necessary to determine the member's total service credit and final compensation and calculate the amount of the member's retirement benefit. The member's retirement application shall be submitted to the board for approval at the next meeting after ~~the division~~ MPERA finalizes the benefit amount.

(4) Estimated retirement benefits will be suspended after three months if the member's retirement application has not been finalized by ~~the division~~ MPERA and approved by the board. Monthly benefit payments to the member will not resume until after the board approves the retirement application. The first payment following board approval will include any previously suspended payments and retroactive amounts owed the member.

(a) If more than 225 retirement applications are received for members wishing to retire on a specific date, estimated retirement benefits for those retirees may be paid for up to five months prior to suspension under (4).

(5) Once a member has received and accepted a retirement benefit, the member is no longer entitled to a refund of the member's accumulated contributions.

AUTH: 19-2-403, MCA

IMP: 19-2-403, 19-2-502, 19-2-901, MCA

STATEMENT OF REASONABLE NECESSITY: There is no longer a Public Employees' Retirement Division (PERD or division). It is now the Montana Public Employee Retirement Administration (MPERA). Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. As baby boomers begin to retire, MPERA's workload will increase. The board believes it necessary to increase the three month limit for final approval of a retiree's benefits if the workload becomes too great. Continuation of the three month time frame in those circumstances will lead to increased errors and increased employee costs (overtime).

New section (5) is added to make clear to retiring members that once they retire, and accept a retirement benefit, they can no longer change their mind and receive a refund of their accumulated contributions. The board has recently received refund requests from retired members who face an unexpected financial emergency. This proposed language ensures that everyone understands that the refund option and the retirement option are mutually exclusive.

2.43.801 (2.43.5001) BASIC UNIT OF SERVICE ~~TIME~~ (1) As of July 1, 1965, the basic unit of service ~~time~~ for volunteer firefighters is one fiscal year. Volunteer firefighters not continuously on the active membership list of a single qualifying volunteer fire company for the entire fiscal year shall not be listed on the annual certificate and shall not receive credit for service under the Volunteer Firefighters' Compensation Act (VFCA) for that fiscal year. A volunteer fire company qualifies to participate in the VFCA if the requirements of 19-17-402, MCA, are met.

(2) A volunteer firefighter shall receive one year of credit for service under the ~~Volunteer Firefighters' Compensation Act~~ VFCA for each two full fiscal years of service performed prior to July 1, 1965.

AUTH: 19-17-203, MCA
IMP: 19-17-201, 19-17-401, 19-17-402, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. The term "qualifying volunteer fire company" is vague and requires further explanation.

2.43.802 (2.43.5002) FAILURE TO FILE REQUIRED REPORTS (1) In order to receive credit for service under the ~~Volunteer Firefighters' Compensation Act~~ VFCA, volunteer fire ~~departments~~ companies must ~~submit~~ file an "annual certificate" ~~to the~~ with MPERA. The certification is a report by the fire chief that the members listed on the certificate were active for the full fiscal year and also had the required 30 hours of training. This report is on a fiscal year basis (July through June) and is due by September 1 of each year. The annual certificate is signed by the fire chief and notarized. Annual certificate forms are provided by ~~the~~ MPERA.

(2) Annual certificates filed after the September 1 due date must be appealed to and considered by the board for approval. Information provided to the board by the fire chief or designated official ~~to the board~~ must include:

(a) the original, notarized annual certificate;

(b) certified training documents showing the required 30 hours of training per listed member;

(c) a letter from the fire chief explaining why the annual certificate was not ~~submitted~~ filed timely; and

(d) if requested by the fire chief, oral argument before board.

AUTH: 19-17-203, MCA
IMP: 19-17-108, 19-17-201, 19-17-402, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. "Volunteer fire departments" is proposed to be change to "volunteer fire companies" to comply with changes made to 19-17-102(9), MCA, by the 2007 Montana Legislature. The term "companies" is defined to encompass fire departments, fire companies, fire districts, and fire service areas.

The term "submitted" is proposed to be replaced with the term "filed" as the report must be filed with MPERA by a certain date. Thus, the term "filed" as defined in ARM 2.43.301 is applicable to this situation. Many fire chiefs designate administrative personnel to file the required certificates and other reports. MPERA will accept filings from either the chief or the chief's designee.

2.43.803 (2.43.5006) APPLICATION FOR GROUP INSURANCE PREMIUM PAYMENTS (1) Each volunteer fire company, or organization or agency maintaining supplemental insurance for a fire company, is eligible for payments toward supplemental insurance coverage for ~~their~~ active members of the fire company provided the company ~~submits~~ files by December 31 of each year:

(a) ~~an~~ a completed MPERA-provided application form ~~(as provided by the MPERA)~~;

(b) a copy of the ~~department's~~ fire company's active membership list certified by the county clerk as required by 7-33-2311, MCA; and

(c) proof of insurance.

AUTH: 19-17-203, MCA
IMP: 19-17-103, 19-17-201, MCA

STATEMENT OF REASONABLE NECESSITY: Frequently, MPERA is asked to send payments directly to the county or other governmental entity carrying supplemental insurance for the volunteer fire company. Therefore, MPERA is proposing to amend this rule to allow the payments to go to either the volunteer fire company or the entity providing the supplemental insurance.

The term "department" is proposed to be changed to "fire company" to comply with

changes made to 19-17-102(9), MCA, by the 2007 Montana Legislature. The term "company" is now defined to encompass fire departments, fire companies, fire districts, and fire service areas. The term "submitted" should be replaced with the term "filed" as the requested information must be filed with MPERA by a certain date, December 31st of each year. Thus, the term "filed" as defined in ARM 2.43.301 is applicable to this situation.

The rule is further clarified to indicate that the application provided by MPERA must be completed prior to being filed.

2.43.804 (2.43.5007) PAYMENTS TO SERVICE PROVIDERS FOR MEDICAL EXPENSES RESULTING FROM DUTY-RELATED INJURIES AND ILLNESSES (1) Payments for medical expense claims made pursuant to Title 19, chapter 17, part 5, MCA, ~~shall~~ will be ~~ordered~~ paid directly to medical service providers after:

(a) the claim is properly filed as described in 19-17-502, MCA; and

(b) all personal and/or group insurance payments for those services first have been deducted from the claim.

(2) Medical expense claims in excess of $1,000 must be approved by the board prior to payment by MPERA.

(3) Subsequent insurance settlements in payment of medical expenses which have been previously paid by the board shall be reimbursed to the pension fund within 60 days of receipt by member or service provider.

AUTH: 19-17-203, MCA
IMP: ~~19-17-103, 19-17-201,~~ 19-17-504, 19-17-506, MCA

STATEMENT OF REASONABLE NECESSITY: Statute provides that the board will authorize payment of medical expenses upon compliance with various requirements. The term "ordered" is too strong and denotes the need to obtain a court order when none is required.

2.43.905 (2.43.2205) TREATING SALARY DEFERRALS UNDER A CAFETERIA PLAN AS COMPENSATION – BACKGROUND (1) Pretax deductions allowed by state and federal law are included in compensation as that term is defined in the following statutes:

(a) 19-3-108, MCA ~~(public employees' retirement system)~~ (PERS);

(b) 19-5-101, MCA ~~(judges' retirement system)~~ (JRS);

(c) 19-6-101, MCA (~~highway patrol officers' retirement system)~~ (HPORS);

(d) 19-7-101, MCA ~~(sheriffs' retirement system)~~ (SRS);

(e) 19-8-101, MCA ~~(game wardens' and peace officers' retirement system)~~ (GWPORS);

(f) 19-9-104, MCA ~~(municipal police officers' retirement system)~~ (MPORS); and

(g) 19-13-104, MCA ~~(firefighters' unified retirement system)~~ (FURS).

(2) Under federal law, pretax deductions that may be included in the definition of compensation include elective contributions under an IRC section 125

cafeteria plan, but only to the extent the amounts would be includible in gross income but for IRC section 125(a). See IRC section 415.

(3) The board is required to administer PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS in a manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the IRC. Therefore, the board adopts this subchapter to ensure that only elective contributions that would be includible in gross income but for the fact they were made under a bona fide cafeteria plan under IRC section 125 will be included as compensation for purposes of PERS, JRS, HPORS, SRS, GWPORS, MPORS, and FURS.

AUTH: 19-2-403, MCA
IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

2.43.914 (2.43.2214) IMPLEMENTATION AND COMPLIANCE (1) A participating employer must demonstrate compliance with this subchapter as follows:

(a) The employer must submit to the board a copy of the employer's IRC section 125 plan document and the salary reduction or election form that must be completed by the employees wishing to participate.

(b) The salary reduction or election form must be the document that will be used for the enrollment period that precedes the next IRC section 125 plan year.

(c) The open enrollment period must be specifically identified in the material provided to the participating employer's employees and in the material provided to the board.

~~(c)~~ (d) Once compliance has been demonstrated, the employer must verify on an annual basis that its IRC section 125 plan document and election form have not changed. If either document does change, the new document or election form must be submitted to the board.

(2) If an employer fails to provide the IRC section 125 plan document, the salary reduction or election form in a format that complies with this subchapter, or fails to use the salary reduction or election form during the enrollment period, then compensation for that employer shall not include the IRC section 125 plan's salary reduction amount.

(3) Board policy number BOARD Admin 03 titled "Treating Salary Deferrals Under a Cafeteria Plan as Compensation" contains several examples of both valid and invalid cafeteria plans, elections, and waivers and should be referenced for further guidance.

AUTH: 19-2-403, MCA
IMP: 19-2-1001, 19-2-1005, 19-2-1010, 19-3-108, 19-5-101, 19-6-101, 19-7-101, 19-8-101, 19-9-104, 19-13-104, MCA

STATEMENT OF REASONABLE NECESSITY: MPERA has conducted audits of 125 plans that do not specify the plan's open enrollment period. In order to be a valid 125 plan for IRS purposes, the enrollment window must be identified. The board believes it prudent to include this requirement in its rules to support MPERA's efforts to ensure full compliance with section 125 of the IRC for employers that intend to include 125 plan benefits as compensation for retirement purposes.

2.43.1002 (2.43.3502) ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on ~~February 8, 2007~~ January 10, 2008.

(2) The board adopts and incorporates by reference the State of Montana 401(a) Plan Full Discretion Guidelines for the Stable Value Investment Option approved by the board on February 22, 2001.

(3) Copies of the Investment Policy Statement and Full Discretion Guidelines may be obtained from ~~the~~ MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@mt.gov. The documents are also available on-line at mpera@mt.gov.

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

STATEMENT OF REASONABLE NECESSITY: The Employee Investment Advisory Council (EIAC), with the assistance of the plan's investment consultant, reviews the defined contribution retirement plan's investment options and compares the options to the plan's investment policy statement (IPS). The IPS establishes the requirements and criteria for the investment options within the plan, as well as the requirements and criteria to be followed when changing investment options. The IPS must be reviewed by the board annually.

The board reviewed the IPS at its January 10, 2008 meeting. The board expressed its preference to remain as consistent as possible with respect to the terms of the IPS. The board then determined to correct a grammatical error in the first sentence of the paragraph immediately following the definitions contained in Section 3 of the IPS and to recognize that the Association for Investment Management and Research changed its name to the CFA Institute. Those changes have been made to the IPS, which must now be adopted by reference through the amendment of this rule.

2.43.1003 (2.43.3503) DEFINED CONTRIBUTION RETIREMENT PLAN INVESTMENT OPTIONS (1) The board will choose, regularly review, and may discontinue, add, or change investment options offered to participants of the ~~Defined Contribution Retirement Plan (DCRP)~~ DCRP. In doing so, the board will consider recommendations of the statutorily established Employee Investment Advisory Council and follow criteria established in the Investment Policy Statement.

(2) A DCRP participant with assets in a discontinued investment option will be given notice and 90 days to move assets from the investment option being discontinued to an offered investment option. Assets remaining in a discontinued investment option at the end of the 90-day period will be automatically transferred to the investment option similar in investment category and style selected by the board to replace the discontinued investment option. If the discontinued investment option is not replaced, the board will transfer the fund balance to the default balanced fund.

(3) ~~No notice will be provided~~ DCRP participants will be provided a minimum of 30 days notice if the board replaces or changes the ~~Stable Value Investment Option Manager~~ stable value investment option manager. The ~~Stable Value Investment~~ stable value investment option assets will automatically transfer to the new manager(s).

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2122, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. The board need only consider recommendations made by EIAC but must follow the criteria established in the IPS.

The same request for proposals process is used for selecting mangers of the stable value investment option as is used for changing managers of other fund classes. The board sees no reason to not inform DCRP participants when the stable value investment option manager is set to change. Public notice should be encouraged. The Gregg Reference Manual, relied on by the Secretary of State's Office, does not permit capitalization of titles such as those used in this rule.

2.43.1004 (2.43.3504) DEFINED CONTRIBUTION RETIREMENT PLAN DEFAULT INVESTMENT FUND (1) The board will identify a balanced fund to be the default investment fund.

(2) The following assets will be deposited in the default investment fund:

(a) assets initially transferred from the PERS ~~Defined Benefit Retirement Plan (DBRP)~~ DBRP pursuant to ARM 2.43.1030 on behalf of ~~Defined Contribution Retirement Plan (DCRP)~~ DCRP participants;

(b) assets transferred from a discontinued, but not replaced, investment option pursuant to ARM 2.43.1003(2); and

(c) assets received without the DCRP participant having selected investment options.

(3) These assets will remain in the default investment fund until the DCRP participant files valid investment directions and redirects assets from the default investment fund to the selected investment option(s).

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2114, 19-3-2115, 19-3-2117, 19-3-2122, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

2.43.1010 (2.43.3510) ELECTION PERIOD (1) Active PERS members ~~generally~~ have 12 ~~calendar~~ months to complete the retirement plan choice election form provided by the board and file the election ~~form~~ with ~~the~~ MPERA. The 12-month election period starts the first day of the month following the month the member is initially reported to MPERA.

~~(2) Specific categories of PERS members and their election periods are:~~

~~(a) A PERS member who is active both on and before July 1, 2002 must file an election by June 30, 2003.~~

~~(b) Any PERS member, including seasonal, temporary, or part-time employees, who is active both on and before July 1, 2002 and subsequently becomes inactive any time before June 30, 2003, must file an election by June 30, 2003. Members will not have a new election period by virtue of returning to active employment at a later date.~~

~~(c) A PERS member newly hired or rehired on or after July 1, 2002 must file an election within 12 calendar months from the initial date of hire or rehire as reported by the reporting agency.~~

~~(d)~~ (2) Any newly hired PERS member ~~newly hired or rehired on or after July 1, 2002~~, including seasonal, temporary, or part-time employees, who subsequently becomes inactive, must still file an election within their 12- ~~calendar months from the initial date of hire or rehire~~ month election period. Members will not have a new election period by virtue of returning to active employment at a later date.

~~(e)~~ (3) The 12-month election period for any ~~Any~~ PERS member ~~whose membership~~ who has not been properly reported to ~~the~~ MPERA will ~~have 12 calendar months from the date~~ start the first day of the month following the month the member is properly reported ~~to file an election~~.

(a) An election to transfer to the PERS ~~Defined Contribution Retirement Plan~~ DCRP or the Montana University System Optional Retirement ~~program~~ Program will be effective upon confirmation by ~~the~~ MPERA pursuant to ARM 2.43.1012 and will not be retroactive.

~~(f)~~ (4) ~~Employees~~ The 12-month election period for employees of any municipal corporation, county, or public agency ~~in the state~~ which becomes a contracting employer with ~~the~~ PERS as provided under 19-3-201, MCA will ~~have 12 calendar months from~~ start the first day of the ~~date the new contracting employer's resolution is signed and approved by the board to file an election~~ month following the month the contracting employer initially reports the employee to MPERA.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2111, MCA

STATEMENT OF REASONABLE NECESSITY: When the defined contribution retirement plan was initially adopted, implementing rules were required to address current PERS members who had one year to elect whether to participate in the DCRP or the DBRP. Those rules are no longer necessary as the one year window has expired. Subsections (2)(a) through (c) pertain only to the initial election window

and are no longer relevant. MPERA proposes to repeal those subsections to avoid confusion and to reword other subsections to address the current election window.

Statute requires a 12-month election window. Initially, statute required the 12 months to commence upon the member's hire date. However, MPERA does not know the member's hire date. MPERA does not know of the member's existence until the employer reports the member to MPERA. Therefore, statute was amended in 2007 to commence the 12-month window at the time the member is reported to MPERA. The proposed amendments implement this same change and are needed to ensure consistency with statute.

2.43.1011 (2.43.3511) RETIREMENT PLAN CHOICE ELECTION FORM

(1) ~~The board~~ MPERA shall provide PERS members a retirement plan choice election form which will require the following information:

(a) full name (first, last, middle initial);

(b) social security number;

(c) date of birth;

(d) complete address;

(e) employing agency or agencies;

(f) the member's signature indicating the elected retirement plan or program; and

(g) the date the member signed the election form.

(2) The PERS member shall complete and file the election form directly with ~~the~~ MPERA within the timeframes defined in ARM 2.43.1010. Election forms given to employers or any other party are not considered to be filed with ~~the~~ MPERA.

(3) The PERS member's election is irrevocable once the election form is filed with ~~the~~ MPERA.

(4) The effective date of the election will be the date the member's election is confirmed by ~~the~~ MPERA pursuant to ARM 2.43.1012.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2111, MCA

STATEMENT OF REASONABLE NECESSITY: MPERA, as the administrative arm of the Public Employees' Retirement Board, is the actual entity that provides forms to members of the retirement systems administered by MPERA and the board. "The" is not needed before "MPERA" and is being deleted throughout the rules to save space and promote ease of reading.

2.43.1012 (2.43.3512) ELECTION ELIGIBILITY AND CONFIRMATION

(1) Upon receipt of a retirement plan choice election form, ~~the~~ MPERA will verify that the member is eligible to make the election.

(2) The member is eligible to make an election if all the following conditions are met:

(a) the member was an active PERS member on or after July 1, 2002, with a PERS membership card on file with MPERA;

(b) the member made the election within the timeframes defined in ARM 2.43.1010;

(c) the member ~~does not have an incomplete PERS Defined Benefit Retirement Plan (DBRP)~~ has completed any existing PERS or non-PERS service purchase contract pursuant to ARM 2.43.1015; and

(d) the member is not subject to a PERS DBRP Family Law Order.

(3) ~~The~~ MPERA will confirm the PERS member's eligibility and election within five working days of receipt of the election form.

(4) The effective date of the election will be the date it is confirmed by ~~the~~ MPERA.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2111, 19-3-2112, 19-3-2115, MCA

STATEMENT OF REASONABLE NECESSITY: PERS membership is confirmed through the existence of a valid PERS membership card. A membership card also contains beneficiary information that is essential to the proper administration of PERS. A membership card that provides this critical information is therefore necessary before a PERS member can move from the defined benefit to the defined contribution retirement plan.

At the time the DCRP was created, existing PERS members had one year to elect whether to participate in the DBRP or the DCRP. Many of those members had service purchase agreements. Service cannot be purchased by DCRP members. Therefore, PERS DBRP members with service purchase agreements who wished to move to the DCRP were required to complete or terminate their service purchases prior to moving to the DCRP. Currently only new PERS employees have the option to elect to join either the DBRP or the DCRP. Therefore, the only service purchase agreements that may be in existence would be for the purchase of service in MPERA-administered retirement systems other than PERS or service purchase contracts for inactive PERS members. Subsection (2)(c) is proposed to be amended to reflect that change.

The term "DBRP family law order" as used in this rule applies only to DBRP family law orders in existence for members of the PERS.

"The" is not needed before "MPERA" and is being deleted throughout the rules to save space and promote ease of reading.

2.43.1015 (2.43.3515) PURCHASE OF SERVICE NOT PERMITTED BY PARTICIPANT IN DEFINED CONTRIBUTION RETIREMENT PLAN (1) A member of ~~the~~ PERS with an existing non-PERS service purchase contract entered into pursuant to any MPERA statute or rule who wishes to elect the ~~Defined Contribution Retirement Plan (DCRP)~~ DCRP or the Montana University System's Optional Retirement Plan (ORP) must terminate or complete the service purchase contract before the election will be confirmed by MPERA.

(2) If a member of ~~the~~ PERS with an existing service purchase contract files an election form electing either the DCRP or the ORP, MPERA will send written notice to the member that the election cannot be confirmed until the service purchase contract is either terminated or completed.

(3) The notice will give the member 30 days to provide MPERA with written notification of the member's intentions.

(4) The member must choose one of the following options:

(a) pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract and have the entire amount of service purchased under the contract transferred to the DCRP; or

(b) pay nothing more to MPERA and have the prorated amount of service purchased under the contract credited and applicable contributions transferred to the DCRP; or

(c) change the member's election to the ~~Defined Benefit Retirement Plan (DBRP)~~ DBRP.

(5) If a member chooses the option in (4)(a), the member may, pursuant to ARM 2.43.441, complete the service purchase contract with a rollover of funds from an eligible retirement plan account belonging to the member or a direct trustee-to-trustee transfer of funds from the member's 26 USC 403(b) tax-sheltered annuity or 26 USC 457 governmental plan, subject to (5)(a):

(a) A direct trustee-to-trustee transfer of funds from the member's 26 USC 403(b) or 26 USC 457 governmental plan prior to the member's severance from employment can be made only if the transfer is either for the purchase of permissive service credit (as defined in section 415(n)(3)(A) of the Internal Revenue Code) under the receiving defined benefit governmental plan or a repayment to which section 415 of the Code does not apply by reason of section 415(k)(3) of the Code. A purchase of service pursuant to 19-3-513, 19-5-409, 19-6-804, 19-7-804, 19-8-904, 19-9-411, or 19-13-405, MCA, is ~~not~~ a purchase of permissive service credit.

(6) If a member chooses the option in (4)(a), but then fails to complete the service purchase contract by the end of the member's 12-month election period, MPERA will unilaterally implement (4)(b).

(7) If a member with an existing service purchase contract fails to provide MPERA with written notice of the member's intentions within the 30 days provided in (3), MPERA will unilaterally implement (4)(b). MPERA will take this action at the close of the 30-day timeframe.

(8) A member with an existing service purchase contract who elects the DCRP or the ORP in the last month of the member's 12-month election period may pay to MPERA in a lump sum the entire amount remaining due under the service purchase contract. ~~and have the~~

(a) The entire amount of service purchased under the contract will then be transferred to the DCRP. ~~The payment must accompany the election form.~~

~~(a) If the member does not pay the entire amount due at the time the member files the election form, MPERA will unilaterally implement (4)(b).~~

(b) The member will not be given time to pay off the existing service purchase contract after the close of the member's 12-month election period.

(9) ~~A PERS~~ Any member of an MPERA-administered retirement system with an existing service purchase contract ~~entered into pursuant to any MPERA statute or~~

~~rule~~ who does not elect the DCRP or the ORP may not terminate the service purchase contract pursuant to this rule.

AUTH: 19-2-403, 19-2-1010, 19-3-2104, MCA
IMP: 19-2-710, 19-3-2111, 19-3-2112, 19-3-2115, MCA

STATEMENT OF REASONABLE NECESSITY: At the time the DCRP was created, existing PERS members had one year to elect whether to participate in the DBRP or the DCRP. Many of those members had service purchase agreements. Service cannot be purchased by DCRP members. Therefore, PERS DBRP members with service purchase agreements who wished to move to the DCRP were required to complete or terminate their service purchases prior to moving to the DCRP. Currently only new PERS employees have the option to elect to join either the DBRP or the DCRP. Therefore, the only service purchase agreements that may be in existence would be for the purchase of service in MPERA-administered retirement systems other than PERS or service purchase contracts for inactive PERS members. Proposed amendments to (1), (8), and (9) reflect that change.

Subsection (4)(b) is proposed to be amended as service is "credited" to a member's account, while employee contributions are "transferred" to the DCRP. Subsection (5)(a) is proposed to be amended to clarify that only direct trustee-to-trustee transfers are permitted when purchasing permissive service credit while an active member.

"The" is not needed before "PERS" and is being deleted throughout the rules to save space and promote ease of reading. Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. The other proposed changes are for clarification purposes only and have no substantive impact on the rule.

2.43.1017 (2.43.3517) FAMILY LAW ORDERS, EXECUTIONS, AND INCOME-WITHHOLDING ORDERS AND ELECTIONS (1) A member of ~~the~~ PERS who is subject to a PERS Family Law Order pursuant to 19-2-907, MCA, and wishes to elect the ~~Defined Contribution Retirement Plan (DCRP)~~ DCRP or the Montana University System's Optional Retirement Program (ORP), must have the Family Law Order amended to comply with the DCRP or ORP and approved by the board no later than the end of the member's 12-month election period.

(2) A member of ~~the~~ PERS who is subject to an execution or income-withholding order pursuant to 19-2-909, MCA, and wishes to elect the DCRP or the ORP, must have the execution or income-withholding order amended to comply with the DCRP or the ORP no later than the end of the member's 12-month election period.

(3) If the order discussed in (1) or (2) is not properly amended and approved by the close of the member's 12-month election period, MPERA will not confirm the member's election. The member will remain a participant of the ~~Defined Benefit Retirement Plan~~ DBRP.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-907, 19-2-909, 19-3-2111, MCA

STATEMENT OF REASONABLE NECESSITY: The term "DBRP family law order" as used in this rule applies only to DBRP family law orders in existence for members of the PERS. Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. "The" is not needed before "PERS" and is being deleted throughout the rules to save space and promote ease of reading.

2.43.1020 (2.43.3520) ELECTION FOR EMPLOYEES IN OPTIONAL PERS MEMBERSHIP POSITIONS (1) An employee eligible for optional membership ~~under~~ who, pursuant to 19-3-412, MCA, ~~who~~ chooses to be a member of ~~the~~ PERS ~~on or after July 1, 2002,~~ will initially be a participant of the PERS ~~Defined Benefit Retirement Plan (DBRP)~~ DBRP. The DBRP participant will have ~~one year~~ 12 months from the ~~date he or she elects to be a member of the PERS~~ first day of the month following the month the member is initially reported to MPERA as a PERS member to file a retirement plan choice election form with ~~the~~ MPERA pursuant to ARM 2.43.1010.

(2) An employee who declines optional membership under 19-3-412, MCA, is not a member of ~~the~~ PERS and has no retirement plan choice.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2104, 19-3-2111, MCA

STATEMENT OF REASONABLE NECESSITY: "The" is not needed before "MPERA" and is being deleted throughout the rules to save space and promote ease of reading. Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

MPERA does not generally track the actual day an employee with the option to join PERS elects to do so. Thus, the only true date known to MPERA is the initial date the member is reported to MPERA as a PERS member. The change is consistent with statutory changes in 2007. One year is proposed to be changed to 12 months to reflect the actual language in statute.

The other proposed changes are for clarification purposes only and have no substantive impact on the rule.

2.43.1031 (2.43.3531) TIMING OF TRANSFERS TO THE DEFINED CONTRIBUTION RETIREMENT PLAN (1) Once a member's election to join either the PERS ~~Defined Contribution Retirement Plan (DCRP)~~ DCRP or the Montana University System Optional Retirement Program (MUS ORP) has been confirmed, ~~the~~ MPERA will transfer ~~pre-July 1, 2002 contribution transfer amounts and July 1 and post-July 1 contribution amounts within the following timeframes:~~

~~(a) For elections received and confirmed prior to August 1, 2002:~~

~~(i) the pre-July 1, 2002 contribution transfer amount will be transferred to the participant's individual account in the DCRP or the MUS ORP no later than 30 working days after July 1, 2002 (August 13, 2002); and~~

~~(ii) the July contribution amount will be transferred to the individual account in the DCRP or the MUS ORP no later than 10 working days after the date the July payroll is received in good order.~~

~~(b) For elections received and confirmed after August 1, 2002, the pre-July 1, 2002 contribution transfer amount and the July 1 and post-July 1, 2002 ongoing contribution amount will be transferred~~ contributions to the participant's individual account in the DCRP or the MUS ORP ~~no later than~~ within 15 working days ~~after the MPERA confirms the election~~.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2114, 19-3-2117, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

When the DCRP was initially adopted, implementing rules were required to address current PERS members who had one year to elect whether to participate in the DCRP, the MUS ORP, or the DBRP. Those rules are no longer necessary as the one year window has expired. Subsection (1)(a) and portions of (1) and (1)(b) pertain only to the initial election window and are no longer relevant. MPERA proposes to repeal those subsections to avoid confusion and to reword other subsections to address the current election window. The other proposed changes are for clarification purposes only and have no substantive impact on the rule.

2.43.1032 (2.43.3532) CREDITING OF INDIVIDUAL ACCOUNTS

(1) MPERA will transfer a ~~Defined Contribution Retirement Plan (DCRP)~~ DCRP participant's statutorily required employee and employer contributions to the DCRP recordkeeper within two working days after receipt in good order of each reporting agency's contribution report and contributions.

(2) The DCRP recordkeeper will credit individual accounts and transfer contributions to a DCRP participant's selected investment option(s) within ~~two~~ one working ~~days~~ day after receipt of contributions from ~~the~~ MPERA.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-3-2117, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. "The" is not needed before "MPERA" and is being deleted throughout the rules to save space and promote ease of reading.

The current recordkeeper, Great West Retirement Services, now has the ability to credit contributions within one day of receipt. This allows the contributions to be invested more rapidly.

2.43.1045 (2.43.3545) DISTRIBUTION TO PARTICIPANT (1) A ~~Defined Contribution Retirement Plan (DCRP)~~ DCRP participant is entitled to receive the participant's vested accounts upon termination of service in a PERS-covered position, whether for retirement or for other purposes.

(2) The participant shall, within 120 days after the participant terminates service in a PERS-covered position, notify ~~the~~ MPERA of the date upon which the participant wants distribution of the accounts to start.

(a) Distribution must start no later than April 1 of the calendar year following the later of:

(i) the calendar year in which the participant reaches age 70 1/2; or

(ii) the calendar year in which the participant retires from service in a PERS-covered position.

(b) If the participant does not select the date upon which distributions are to start, distributions will start 120 days after termination of service from a PERS-covered position.

(c) Once selected, the participant may change the distribution date provided the date continues to meet the requirements of (2)(a).

(3) The participant shall also, no later than 30 days before the start of the distribution of the accounts, select a payment option.

(a) Payment options include:

(i) a lump sum distribution of the participant's vested accounts, less applicable taxes;

(ii) a direct trustee-to-trustee rollover of the participant's vested accounts to an eligible retirement plan, ~~an~~ a traditional or Roth individual retirement account, or an annuity;

(iii) a regular rollover of the participant's vested accounts to an eligible retirement plan;

(iv) periodic payments of a fixed amount; or

(v) periodic payments based on the participant's life expectancy, determined annually~~; or~~

~~(vi) a life contingent annuity~~.

(b) ~~No~~ A payment option may only be selected ~~unless~~ if the amounts payable to the participant are expected to be at least equal to the minimum distribution required under section 401(a)(9) of the Internal Revenue Code and satisfy the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

(c) If the participant does not select a payment option, the vested accounts will be paid in a lump sum, less applicable taxes.

(4) If the participant fails to choose a payment option or a distribution time, a lump-sum distribution with 20% withheld for federal taxes will occur 120 days after termination of service from a PERS-covered position.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-1007, 19-3-2123, 19-3-2124, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

The Public Pension Act of 2006 made significant improvements to the options available to participants who wish to rollover their accounts to other eligible retirement or eligible employer plans. The board is proposing to amend its rules to take advantage of these improvements. The changes significantly benefit members and participants of the retirement systems with little cost to the systems. However, failure to take advantage of the options has a tax consequence that the board believes should be set out in its rules.

2.43.1046 (2.43.3546) DISTRIBUTION UPON DEATH OF PARTICIPANT

(1) If a ~~Defined Contribution Retirement Plan~~ DCRP participant dies prior to the start of the distribution of the participant's benefits, the participant's beneficiary, provided the beneficiary is the participant's spouse, has the same payment options as the participant would have had.

(a) Those payment options include:

(i) a lump sum distribution of the participant's vested accounts, less applicable taxes;

(ii) a direct trustee-to-trustee rollover of the participant's vested accounts to an eligible retirement plan, ~~an~~ a traditional or Roth individual retirement account, or an annuity;

(iii) a regular rollover of the participant's vested accounts to an eligible retirement plan;

(iv) periodic payments of a fixed amount; or

(v) periodic payments based on the beneficiary's life expectancy, determined annually~~; or~~

~~(vi) a life contingent annuity~~.

(b) ~~No~~ A payment option may only be selected ~~unless~~ if the amounts payable to the beneficiary are expected to be at least equal to the minimum distribution required under section 401(a)(9) of the Internal Revenue Code and satisfy the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code.

(c) The beneficiary must select the payment option prior to 60 days after the receipt by the board of the satisfactory proof of the participant's death.

(d) If the beneficiary does not select a payment option, the vested accounts will be paid in a lump sum, less applicable taxes.

(2) If the beneficiary is not the member's spouse, the beneficiary may elect to rollover only to an individual retirement account or individual retirement annuity that is treated as an inherited individual retirement account or annuity.

(3) Unless the participant's beneficiary is the participant's spouse, the payment of benefits must start within 60 days after receipt by the board of satisfactory proof of the participant's death.

~~(3)~~ (4) If the beneficiary is the participant's spouse, the spouse may, within 60 days of the participant's death, elect to defer distribution until a date no later than the date the participant would have attained age 70 1/2.

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-1007, 19-3-2124, 19-3-2125, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

The Public Pension Act of 2006 made significant improvements to the options available to the spouse of a deceased member who wishes to rollover their account to other eligible retirement or eligible employer plans. The board is proposing to amend its rules to take advantage of these improvements. The changes significantly benefit members and their spouses. However, the board wishes to also clarify that nonspouse beneficiaries are not entitled to the same options.

2.43.1101 (2.43.4606) DEFINITIONS (1) "DROP" means the deferred retirement option plan.

(2) "DROP ~~accrual~~ account" means the amount of money that has accrued to a DROP participant and includes the monthly DROP accrual plus post retirement adjustments, times the applicable number of months of participation, and interest.

(3) "Monthly DROP accrual" means the amount equal to the monthly benefit that would have been payable to the participant had the participant terminated and retired.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1205, MCA

STATEMENT OF REASONABLE NECESSITY: The Montana Legislature changed the term "DROP accrual" to "DROP account" as that term is more descriptive. The rule is being changed for consistency purposes.

2.43.1104 (2.43.4609) DROP APPLICATION PROCESS (1) Eligible members who wish to participate in the DROP must file a DROP information request with ~~the~~ MPERA.

(2) The information request must include the member's:

(a) full name;

(b) social security number;

(c) mailing address;

(d) date of birth; and

(e) anticipated date to start the DROP period.

(3) ~~The~~ MPERA will calculate estimates of monthly DROP accruals and the DROP benefit. The estimates and a DROP application will be sent to the member.

(4) An eligible member who wishes to participate must complete the DROP application and return it to ~~the~~ MPERA.

~~(a) Except as provided in (4)(b),~~ MPERA must receive the completed application at least two weeks before the first day of the month the member wants the DROP period to be effective; otherwise MPERA will notify the member that the DROP period will be effective the following month. If a birth certificate or other acceptable proof of age is required by the application, it must accompany the

application for the application to be complete.

~~(b) An eligible member who retroactively applies to participate in the DROP within the window provided for in 19-9-1204(6), MCA, must file the application on or before October 1, 2003.~~

(5) Once the application is ~~received~~ filed ~~by the~~ with MPERA, the election to participate in the DROP is irrevocable.

AUTH: 19-2-403, 19-3-1203, MCA
IMP: 19-3-1203, 19-9-1204, MCA

STATEMENT OF REASONABLE NECESSITY: The window provided for in 19-9-1204(6), MCA, has expired. Subsection (4)(b) is being repealed to avoid confusion as it is no longer relevant or needed.

"The" is not needed before "MPERA" and is being deleted throughout the rules to save space and promote ease of reading. The term "submitted" should be replaced with the term "filed" as the application must be filed with MPERA by a certain date in order to become effective at the time selected by the member. Thus, the term "filed" as defined in ARM 2.43.301 is applicable to this situation.

2.43.1111 (2.43.4616) INTEREST PAID TO PARTICIPANTS (1) A participant's DROP ~~accrual~~ account must include compounded annual interest.

(2) ~~The~~ Subject to (3), the interest rate will be fixed at the end of each fiscal year and will equal the total rate of return for the trust fund. Interest rates for any part of the current fiscal year will be based on the previous fiscal year's total rate of return.

(3) Interest credited on the DROP account shall comply with any applicable provisions of 29 USC section 623(i)(10)(B)(i) of the federal Age Discrimination in Employment Act (ADEA) and any applicable federal treasury regulations establishing market rates of return for purposes of complying with ADEA.

(4) When the total rate of return for the trust fund is less than zero, participants will receive zero interest.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1206, 19-9-1208, MCA

STATEMENT OF REASONABLE NECESSITY: The Montana Legislature changed the term "DROP accrual" to "DROP account" as that term is more descriptive. The rule is being changed for consistency purposes.

Pursuant to the Pension Protection Act of 2006, new section (3) is required in order for the PERS DCRP to remain a qualified retirement plan under the federal internal revenue code.

2.43.1112 (2.43.4617) DISTRIBUTION OF DROP BENEFIT (1) The DROP benefit will be distributed upon the participant's termination of employment. The

participant may request to receive the DROP benefit in a lump sum, or in a direct rollover to another eligible plan, as allowed by the Internal Revenue Service (IRS).

(2) To make a direct rollover of the DROP benefit, the participant must make arrangements with the other plan and provide any necessary information to ~~the~~ MPERA.

(3) A participant must designate a distribution method within 60 days after termination of employment; otherwise ~~the~~ MPERA will pay the DROP benefit to the participant in a lump sum. Any required federal or state withholding will reduce the amount of the payment.

(4) MPERA will distribute the DROP benefit as soon as administratively feasible once all appropriate documents are ~~received~~ filed with MPERA.

(5) Upon a DROP participant's death, the participant's DROP benefit will be paid to the participant's survivors or, if no survivors exist, then to the participant's designated beneficiaries. The DROP benefit will be paid in a lump sum, unless the recipient is the surviving spouse, in which case the surviving spouse may choose to receive the DROP benefit in a lump sum or in direct rollover to another eligible retirement plan, as allowed by the IRS.

AUTH: 19-2-403, 19-9-1203, MCA
IMP: 19-9-1206, 19-9-1208, MCA

STATEMENT OF REASONABLE NECESSITY: The board is proposing to amend this rule to use the more accurate term "file". File is defined in rule. Using "file" rather than "receive" clarifies that the form must be received by MPERA (as opposed to an employer) before the DROP benefit can be distributed.

2.43.1210 (2.43.4203) DETENTION OFFICER MEMBERSHIP IN SHERIFFS' RETIREMENT SYSTEM (SRS) (1) An active PERS member on July 1, 2005 is eligible to become a member of the SRS, and an employee hired by a sheriff after July 1, 2005 must become a member of the SRS, pursuant to Title 19, chapter 7, part 3, MCA, if the member or employee meets the definition of "detention officer" in 19-7-101(2), MCA, which includes:

(a) being employed in a detention center, a juvenile detention center, a temporary detention center, or a detention facility;

(b) having authority and responsibility for maintaining custody of an inmate for any period of time and performing tasks related to the operation of a detention center; and

(c) completing, within the time allowed by ARM 23.14.526, a detention officers' basic course as provided by the Montana Law Enforcement Academy or equivalent training in a training school meeting the minimum standards of the Board of Crime Control, as required by ARM 23.14.526, pursuant to 44-4-301, MCA.

~~(2) An employee hired by a sheriff after July 1, 2005 who meets all the criteria to be a "detention officer", except completion of training, must be an SRS member from the first day of employment or, if later, the first day all criteria except completion of training are met.~~

~~(3) An SRS member who does not complete timely the training specified in (1)(c) will be considered to be a member of PERS after the time allowed by ARM~~

~~23.14.526 until training is completed. All contributions and the member's membership service and service credit will be adjusted as necessary. Otherwise, an employee who becomes a member of the SRS remains a member of the SRS until the member is no longer employed by the sheriff in a detention center.~~

AUTH: 19-2-403, MCA
IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: Since (2) is covered in statute and it is the sheriffs' responsibility to identify detention officers for SRS coverage purposes, (2) is not needed. Section (3) is contrary to the definition of "detention officer" found in statute and contrary to 19-7-301(3), MCA. The training requirement is integral to remaining a detention officer. If the training requirement is not met, the individual is no longer employed as a detention officer. Section (3) addresses a situation that does not exist and is not necessary.

2.43.1211 (2.43.4204) DETENTION OFFICER ELECTION TO TRANSFER TO SHERIFFS' RETIREMENT SYSTEM (SRS) (1) An active PERS member who, on July 1, 2005, ~~meets~~ met all the criteria to be a "detention officer" ~~may~~ was eligible to make an election to become a member of SRS.

(2) ~~To be an effective election, the written election form prescribed by the board, containing all the required information and including all necessary documentation, must be properly signed and must be filed with the board between July 1, 2005 and April 30, 2006, inclusive.~~

~~(3) A written election received by the board by the 15th day of a calendar month will be effective the first pay period of the following calendar month. A written election received by the board after the 15th day of a calendar month will be effective the first pay period of the second following calendar month.~~

~~(4)~~ A detention officer who ~~becomes a member of the SRS~~ elected to change retirement system membership from PERS to SRS pursuant to (1) has not terminated from service and is not eligible to receive any benefit from PERS until termination of employment.

AUTH: 19-2-403, MCA
IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: Sections (2) and (3) pertain to the initial election window, July 1, 2005 through April 30, 2006, and are no longer relevant or necessary. Old section (4) is proposed to be amended as it applies only to individuals who were detention officers during the above-described window, not to detention officers hired after July 1, 2005.

2.43.1212 (2.43.4207) DETENTION CENTER REPORTS FROM SHERIFFS

(1) On or before June 1 of each year, the board will provide each sheriff an employer report containing the information from the immediately preceding report, on which the sheriff need only provide new information or corrections regarding employees of the sheriffs' office.

(2) By the 15th day of July each year, the sheriff of each county with a detention center must file ~~an~~ the revised employer report with the board.

~~(2)~~ (3) The employer report will include information ~~necessary for the board to determine~~ documenting the appropriate retirement system for detention officers, as of June 30 of each year, including:

(a) each detention officer's name, social security number, retirement system, and date of initial employment in current position;

(b) whether the employee is ~~employed in a detention center, is~~ acting as a detention officer, and has completed a detention officers' basic course or equivalent training at a training school meeting the minimum standards of the Board of Crime Control or is expected to receive such training within the time allowed by ARM 23.14.526; and

(c) the date the employee left employment, if applicable.

~~(3) After the initial sheriffs' employer report, on or before the first working day of the fiscal year, the board will provide each sheriff a form containing the information from the immediately preceding report, on which the sheriff only need provide new information or corrections for filing with the board.~~

(4) ~~Payment of the detention center payroll contributions will be considered delinquent pursuant to 19-2-506, MCA, until both the required contributions and valid employer reports are received by the board.~~ If the sheriff's office employs no detention officers, the report referenced in (3) must indicate that there are no employees who are detention officers.

AUTH: 19-2-403, MCA
IMP: 19-7-101, 19-7-301, 19-7-302, MCA

STATEMENT OF REASONABLE NECESSITY: The 2005 Legislature gave detention officers the choice to join SRS. The current rule was drafted to address the initial detention officer report filed by each sheriff's office following the close of that election window, May 2006. Now that the initial reports have been filed, the reporting process is substantially easier. The board proposes to amend this rule to address the expedited reporting process as well as changes in the information required to be reported. Since the employer will be using an existing list of employees, some of those employees will have left employment. New (3)(c) recognizes that MPERA needs to know why previous detention officers are not being reported. New (4) requires confirmation that no detention officers exist if an individual later claims to have been a detention officer during the time period for which no report is filed because no detention officer existed.

2.43.1701 (2.43.3001) FAMILY LAW ORDERS – GENERAL REQUIREMENTS (1) Upon request, MPERA will provide a checklist of mandatory and optional family law order (FLO) provisions.

(2) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.303, and policies adopted by MPERA and the board.

(3) ~~An~~ Except with respect to the DCRP, an account cannot be established for an alternate payee in a retirement system or plan.

(4) A FLO may not force a member to:

(a) terminate employment;

(b) ~~apply for retirement~~ retire from employment; or

(c) belong to a specific retirement system or plan.

(5) Upon receipt of a certified copy of a stay from the issuing court or the Montana Supreme Court, ~~the~~ MPERA and the board will suspend further consideration or implementation of a proposed FLO. Unless otherwise directed by court order, ~~the~~ MPERA will retain payments withheld prior to receipt of the stay and simultaneously resume making payments of participant's full benefit. ~~The~~ MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, ~~the~~ MPERA will proceed with consideration, approval, and implementation procedures.

(6) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a FLO. If a proposed FLO is not received before the order expires, payments will resume and any retained payments will be made to the participant.

(7) The administrative cost, if any, of a FLO will be billed to the party filing the proposed FLO with the board, unless another party is designated in the FLO to pay the cost. Amounts owing may be offset against payments to be received by the appropriate party.

(8) An alternate payee may receive ~~payment~~ monthly benefit payments by electronic fund transfer upon submission of a properly executed form required by ~~the~~ MPERA.

(9) An alternate payee must promptly inform ~~the~~ MPERA of any change of name or address.

AUTH: 19-2-403, 19-2-907, MCA
IMP: 19-2-907, MCA

STATEMENT OF REASONABLE NECESSITY: Since the initial adoption of this rule, the board and MPERA have adopted policies regarding the release of confidential information. Those policies include provisions related to the release of a member's account information and should be referenced in this rule as an additional resource.

The board and its DCRP recordkeeper, Great West Retirement Services, have negotiated a process for creating a subaccount for alternate payees. Therefore, an account can now be established for an alternate payee using the alternate payee's personal information. However, the account cannot be distributed to the alternate payee until the member is eligible for a distribution of their account.

Subsection (4)(b) and (8) are proposed to be amended to better explain the purpose of those sections. For instance, a member need submit only one form to have all of their monthly benefit payments made by electronic fund transfer.

"The" is not needed before "MPERA" and is being deleted throughout the rules to

save space and promote ease of reading.

2.43.1703 (2.43.3005) FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION FOR THE DEFINED CONTRIBUTION RETIREMENT PLAN

(1) This rule applies only to the ~~defined contribution retirement plan~~ DCRP.

(2) A participant or alternate payee must submit a certified copy of a family law order (FLO) to ~~the~~ MPERA for board approval. The board has delegated authority for approval to the executive director.

(3) ~~The~~ MPERA will notify the participant and the alternate payee when it receives a certified copy of a FLO. The notice will explain the procedures for determining if the FLO can be approved.

(4) While reviewing the FLO, ~~the board may take steps to safeguard the alternate payee's rights. The steps the board may take include, but are not limited to, the following:~~ MPERA will work with the recordkeeper to

~~(a)~~ prevent ~~payments~~ distributions from the participant's account, but allow the participant to manage the investments~~;~~ and

~~(b)~~ segregate the amounts, and earnings thereon, that will be owed to the alternate payee if the FLO is approved~~;~~.

~~(c)~~ (5) ~~pay the non-segregated amounts~~ The segregated amount, with any earnings thereon, will be distributed to the participant if the FLO is not approved within 18 months of the date it was received by MPERA and the participant is entitled to and requests distribution of the account~~; and~~.

~~(d) apply the FLO prospectively if approved more than 18 months after the date it was first received by MPERA.~~

(6) ~~The board~~ Upon approval of the FLO, MPERA will:

(a) notify the participant and the alternate payee ~~once~~ that the FLO is approved~~.~~; and

(b) work with the recordkeeper to ensure a separate subaccount containing the alternate payee's entitlement is created.

(i) The alternate payee will be given necessary information for managing the investments in the subaccount.

(ii) The subaccount will be distributed to the alternate payee upon termination of service or death of the participant.

(7) The FLO will be applied prospectively if approved more than 18 months after the date it was first received by MPERA.

AUTH: 19-2-403, 19-2-907, MCA
IMP: 19-2-907, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. "The" is not needed before "MPERA" and is being deleted throughout the rules to save space and promote ease of reading. The rule is proposed to be slightly restructured to reflect the order in which processing of FLOs occurs.

Current (5)(c) is incorrect in two respects. First, the language could be interpreted to require distribution to the participant whether or not the participant wants a

distribution of their account. Second, pursuant to section 414(p) of the Internal Revenue Code, the member's entire account, including the segregated portion, is subject to distribution after the 18-month time period expires. The term "distribution" is used in federal law and more descriptive than "payment".

The board and its DCRP recordkeeper, Great West Retirement Services, have negotiated a process for creating a subaccount for alternate payees. Therefore, an account can now be established for an alternate payee using the alternate payee's personal information. The alternate payee controls investment of his or her subaccount while the member continues to control the investment of their account. However, the account cannot be distributed to the alternate payee until the member is eligible for a distribution of his or her account.

2.43.1704 (2.43.3008) FAMILY LAW ORDERS -- CONTENTS AND DURATION FOR DEFINED BENEFIT PLANS (1) Pursuant to this rule and ARM 2.43.1705, the board will accept and apply family law orders (FLOs) in the ~~public employees' defined benefit retirement plan~~ PERS DBRP, and the ~~judges', sheriffs', game wardens' and peace officers', highway patrol officers', municipal police officers', and firefighters' unified retirement systems~~ JRS, SRS, GWPORS, HPORS, MPORS, and FURS.

(2) Specific designations of a participant(s) in a FLO may include:

(a) for all systems and plans listed in (1), an individual "member" (active, inactive, or retired);

(b) for the ~~public employees' defined benefit retirement plan~~ PERS DBRP, or ~~the judges', sheriffs', and game wardens' and peace officers' retirement systems~~ JRS, SRS, and GWPORS, "primary" and "contingent beneficiaries" eligible to receive a lump sum payment and "contingent annuitants"; and

(c) for ~~the highway patrol officers', municipal police officers', and firefighters' unified retirement systems~~ HPORS, MPORS, and FURS, "survivors" and "designated beneficiaries" who are eligible to receive lump sum payments.

(3) A FLO may specify a future effective date provided:

(a) a FLO may not be effective any earlier than the date the FLO is received by MPERA;

(b) if the participant is a benefit recipient, the first monthly benefit payment that may be divided is the first benefit payment following the month MPERA receives the FLO; and

(c) a FLO may not provide for payments to an alternate payee prior to the date on which the participant first receives a payment from the retirement system or plan.

(4) Unless otherwise specified in the FLO, payments to an alternate payee will continue only while the participant is receiving payments. The FLO may further limit payments to:

(a) the life of the participant whose payment rights are being transferred;

(b) a specified maximum time;

(c) the life of the alternate payee; or

(d) the life of a designated participant.

(5) The two basic types of payments allowed to alternate payees are:

(a) A "defined sum" must designate a specific total dollar amount to be paid to the alternate payee in the form of a fixed dollar amount payable for a designated maximum number of months. If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid until the alternate payee receives the specific total dollar amount. If the defined sum cannot be divided evenly by the number of payments or monthly amount, any odd amount will be paid in the first payment. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events. Payments will cease when the defined sum is paid or when payments from the account end.

(b) A FLO may order "proportionate payments" by designating either a fixed percentage or a formula describing how to calculate the percentage. The fixed percentage must be expressed as a specific percentage or as a fraction for which the numerator and denominator are indicated. A formula calculating a fixed percentage may use months, years, or dollar amounts to establish a proportionate benefit.

(6) If MPERA is unable to locate an alternate payee upon the death of the participant, MPERA will use IRS's letter forwarding service in a final attempt to locate.

AUTH: 19-2-403, 19-2-907, MCA
IMP: 19-2-907, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. "The" is not needed before "MPERA" and is being deleted throughout the rules to save space and promote ease of reading.

MPERA recently learned of the IRS's letter forwarding service. The board has requested that MPERA use that process in order to attempt to locate alternate payees who fail to keep their address up to date.

2.43.1802 (2.43.5102) ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 457 Plan (deferred compensation) Investment Policy Statement approved by the board on ~~February 8, 2007~~ January 10, 2008.

(2) The board adopts and incorporates by reference the State of Montana 457 Plan Full Discretion Guidelines for the ~~Stable Value Investment Option~~ stable value investment option approved by the board on ~~February 22, 2001~~ December 13, 2007.

(3) Copies of the 457 Plan Investment Policy Statement and Full Discretion Guidelines may be obtained from ~~the~~ MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, phone 1(877)275-7372, e-mail mpera@mt.gov. The documents are also available on-line at mpera@mt.gov.

AUTH: 19-50-102, MCA

IMP: 19-50-102 MCA

STATEMENT OF REASONABLE NECESSITY: The Employee Investment Advisory Council, with the assistance of the plan's investment consultant, reviews the 457 deferred compensation plan's investment options and compares the options to the plan's investment policy statement (IPS). The IPS establishes the requirements and criteria for the investment options within the plan, as well as the requirements and criteria to be followed when changing investment options. The IPS must be reviewed by the board annually.

The board reviewed the IPS at its January 10, 2008 meeting. The board expressed its preference to remain as consistent as possible with respect to the terms of the IPS. The board then determined to correct a grammatical error in the first sentence of the paragraph immediately following the definitions contained in Section 3 of the IPS and to recognize that the Association for Investment Management and Research changed its name to the CFA Institute. Those changes have been made to the IPS, which must now be adopted by reference through the amendment of (1) of this rule.

Similarly, the Stable Value Fund Investment Guidelines were amended in December 2007 but are not effective until contracts between the stable fund providers and the board are amended, projected for September 2008.

2.43.1803 (2.43.5103) DEFERRED COMPENSATION PLAN INVESTMENT OPTIONS (1) The board will choose, regularly review, and may discontinue, add, or change investment options offered to participants of the Deferred Compensation Plan. In doing so, the board will consider recommendations of the statutorily established Employee Investment Advisory Council and follow criteria established in the Plan's Investment Policy Statement.

(2) A Deferred Compensation Plan participant with assets in a discontinued investment option will be given notice and 90 days to move assets from the investment option being discontinued to an offered investment option. Assets remaining in a discontinued investment option at the end of the 90-day period will be automatically transferred to the investment option similar in investment category and style selected by the board to replace the discontinued investment option. If the discontinued investment option is not replaced, the board will transfer the fund balance to ~~the stable value~~ a balanced fund offered by the Deferred Compensation Plan.

(3) ~~No notice will be provided~~ Deferred Compensation Plan participants will be provided a minimum of 30 days notice if the board replaces or changes the ~~Stable Value Investment Option Manager~~ stable value investment option manager. The ~~Stable Value Investment~~ stable value investment option assets will automatically transfer to the new manager(s).

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: In section (1) the board proposes to clarify that it is required to follow the Plan's Investment Policy Statement, while it need only "consider" recommendations of the Employee Investment Advisory Council. Current language leaves the impression that the board need only consider the Plan's Investment Policy Statement, which is incorrect.

Pursuant to requirements contained in the Pension Protection Act of 2006, a stable value fund can no longer be a 457 Plan's default fund. Therefore, upon recommendation of the Employee Investment Advisory Council, the Public Employees' Retirement Board determined on August 14, 2008, to name a balanced fund as its default fund.

The same request for proposals process is used for selecting mangers of the stable value investment option as is used for changing managers of other fund classes. The board sees no reason to not inform Deferred Compensation Plan participants when the stable value investment option manager is set to change. Public notice should be encouraged. The Gregg Reference Manual, relied on by the Secretary of State's Office, does not permit capitalization of titles such as those used in this rule.

2.43.1810 (2.43.5110) QUALIFIED DOMESTIC RELATIONS ORDERS -- GENERAL REQUIREMENTS (1) The board will accept and implement ~~Qualified Domestic Relations Orders (QDROs)~~ QDROs in the Deferred Compensation (457) Plan sponsored by the State of Montana.

(2) Upon request, MPERA will provide to the public a checklist of required and optional provisions for QDROs.

(3) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.303.

(4) Upon receipt of a certified copy of a stay from the issuing court or the Montana Supreme Court, MPERA and the board will suspend further consideration or implementation of a Domestic Relations Order (DRO). Unless otherwise directed by court order, MPERA will not distribute the participant's 457 account pending resolution of the stay. MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, MPERA will proceed with consideration, approval, and implementation procedures.

(5) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a QDRO. If a DRO is not received before the order expires, payments will resume and any retained payments will be made to the participant.

(6) The board will not charge a fee for approving or implementing a QDRO. However, the board may charge a reasonable fee if a participant, an alternate payee, or any of their attorneys make excessive demands of MPERA staff to provide assistance in drafting a DRO which can be qualified.

(7) Any fees required by a third party administrator or record keeper for segregated accounts will be charged against the participant's account unless the QDRO states the fee should be deducted from amounts paid to the alternate payee.

(8) The alternate payee must promptly inform MPERA of any change of

name or address prior to payment of their share of the participant's account.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

The same administrative process applies to the qualification of DROs that applies to the approval of FLOs. The board believes it will be helpful to clarify that process for participants of the 457 deferred compensation plan. Sections (4) through (8) have been moved from ARM 2.43.1812 Qualified Domestic Relations Orders -- Approval and Implementation as they address general requirements for 457 plan QDROs rather than implementation requirements.

2.43.1811 (2.43.5111) QUALIFIED DOMESTIC RELATIONS ORDERS -- CONTENTS (1) A ~~Qualified Domestic Relations Order (QDRO)~~ QDRO must contain the following information:

(a) the name, ~~last known~~ current mailing address, date of birth, and social security number of the participant;

(b) the name, ~~last known~~ current mailing address, date of birth, and social security number of the alternate payee;

(c) the amount or percentage of the participant's account, distribution, or payments to be paid by the Deferred Compensation (457) Plan to the alternate payee, or a description of how to calculate the amount or percentage;

(d) the number of payments or the period of time to which the order applies if the participant is receiving periodic or annuity payments; and

(e) if the participant receives lump sum payments in addition to periodic payments, the QDRO must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.

(2) A QDRO must meet the following requirements:

(a) a QDRO must create or recognize the right of an alternate payee to all or a portion of a participant's account;

(b) a QDRO must relate to Title 40, MCA marital property rights, alimony, or child or other dependent support;

(c) the specified distribution or payment must be of a type or form permitted under the Deferred Compensation (457) Plan;

(d) the specified amount or duration of the payment to the alternate payee may not be greater than that available to the participant under the Deferred Compensation (457) Plan;

(e) the alternate payee may not be granted payment of any benefits that have already been awarded to another alternate payee under another order previously determined to be a QDRO; and

(f) the QDRO must contain a statement that the QDRO is subject to review and approval by the board.

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading.

Parties involved in preparing a DRO are the best sources of address information. It is incumbent upon them to provide current rather than "last known" addresses for both the participant and the alternate payee. Knowing the most current address may assist MPERA in locating participants or alternate payees in the future.

2.43.1812 (2.43.5112) QUALIFIED DOMESTIC RELATIONS ORDERS -- APPROVAL AND IMPLEMENTATION (1) A participant or alternate payee must submit a certified copy of a ~~Domestic Relations Order (DRO)~~ DRO to ~~the~~ MPERA for board approval. The board may delegate authority for approval to the executive director.

(2) ~~The~~ MPERA will notify the participant and the alternate payee when it receives a certified copy of a DRO. The notice will explain the procedures for determining if the DRO is qualified.

(3) While reviewing the DRO, ~~the board may take steps to safeguard the alternate payee's rights. The steps the board may take include, but are not limited to, the following:~~ MPERA will work with the recordkeeper to:

(a) prevent ~~payments~~ distributions from the participant's account, but allow the participant to manage the investments; and

(b) segregate the amounts, and earnings thereon, that will be owed to the alternate payee if the DRO is qualified~~;~~.

~~(c)~~ (4) ~~pay the nonsegregated amounts~~ The segregated amount, with any earnings thereon, will be distributed to the participant if the DRO is not qualified within 18 months of the date it was received by MPERA and the participant is entitled to and requests distribution of the account~~; and~~ .

~~(d) apply the DRO prospectively if approved more than 18 months after the date it was first received by MPERA.~~

~~(4) Any fees required by a third party administrator or record keeper for segregated accounts will be charged against the participant's account unless the qualified domestic relations order (QDRO) states the fee should be deducted from amounts paid to the alternate payee.~~

(5) The information and requirements identified in ARM 2.43.1811 are considered the minimum the board needs to administer a QDRO. Domestic relations orders that do not contain the minimum information or address the minimum requirements are not QDROs and will be rejected by the board as not qualified. Rejected orders will be returned to the appropriate party with information on how to have the DRO qualified.

(6) Once the DRO is qualified, the board will:

(a) notify the participant and the alternate payee that the DRO is being implemented as a QDRO; and

(b) apply the QDRO prospectively if approved more than 18 months after the date it was first received by MPERA.

(7) The alternate payee may receive their payment only as a direct payment, a rollover, or a transfer.

~~(8)~~ (a) If the alternate payee is ~~already~~ a participant or is eligible to participate in the State's Deferred Compensation (457) Plan and establishes an account, the alternate payee's ~~payments~~ distribution may be made to the alternate payee's 457 plan account.

(b) ~~However, if~~ If the alternate payee is not eligible to participate in the state's Deferred Compensation (457) Plan, a 457 plan account cannot be established for the alternate payee.

~~(9) Upon receipt of a certified copy of a stay from the issuing court or the Montana Supreme Court, the MPERA and board will suspend further consideration or implementation of a DRO. Unless otherwise directed by court order, the MPERA will not distribute the participant's 457 account pending resolution of the stay. The MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the MPERA will proceed with consideration, approval and implementation procedures.~~

~~(10) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a QDRO. If a DRO is not received before the order expires, payments will resume and any retained payments will be made to the participant.~~

~~(11) The board will not charge a fee for approving or implementing a QDRO. However, the board may charge a reasonable fee if a participant, an alternate payee or any of their attorneys make excessive demands of MPERA staff to provide assistance in drafting a DRO which can be qualified.~~

AUTH: 19-50-102, MCA
IMP: 19-50-102, MCA

STATEMENT OF REASONABLE NECESSITY: Acronyms are being defined and will be used throughout the rules to save space and to promote ease of reading. "The" is not needed before "MPERA" and is being deleted throughout the rules to save space and promote ease of reading. The rule is proposed to be slightly restructured to reflect the order in which processing of DROs occurs.

Current (3)(c) is incorrect in two respects. First, the language could be interpreted to require distribution to the participant whether or not the participant wants a distribution of their account. Second, pursuant to section 414(p) of the Internal Revenue Code, the member's entire account, including the segregated portion, is subject to distribution after the 18-month time period expires. The term "distribution" is used in federal law and more descriptive than "payment."

Current (4) and (9) through (11) have been moved to ARM 2.43.1810 Qualified Domestic Relations Orders -- General Requirements as they address general requirements for 457 plan QDROs rather than implementation requirements.

Section (7) is proposed to be redrafted to clarify that the alternate payee must be

eligible to participate and have an account in the state's 457 deferred compensation plan in order to transfer their portion of the participant's account to the 457 deferred compensation plan.

5. The department proposes to repeal the following rules:

2.43.409 IMPROPER CREDIT

AUTH: 19-2-403, 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA
IMP: 19-2-903, 29-3-1403, 19-5-703, 19-6-704, 19-7-704, 19-8-804, 19-9-1003, 19-13-1002, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is being repealed as it has been integrated into New Rule I.

2.43.425 INCOMPLETE PAYMENTS

AUTH: 19-2-403, 19-3-2104, MCA
IMP: 19-2-602, 19-2-704, Title 19, ch. 3, part 5, 19-3-2115, 19-5-409, Title 19, ch. 6, part 8, ch. 7, part 8, ch. 8, part 9, ch. 9, part 4, ch. 13, part 4, MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) addresses members of any MPERA-administered system who terminate employment covered by that system prior to completion of the service purchase contract. This situation is covered in 19-2-704, MCA, as is (2). Section (3) applied only to PERS members during the initial election window. That window has expired.

2.43.428 ACCEPTABLE DOCUMENTATION OF PUBLIC SERVICE EMPLOYMENT

AUTH: 19-2-403, MCA
IMP: 19-2-715, 19-3-503, 19-3-505, 19-3-510, 19-3-512, 19-3-515, 19-6-801, 19-6-803, 19-7-803, 19-8-901, 19-8-903, 19-9-403, 19-13-403, MCA

STATEMENT OF REASONABLE NECESSITY: The board believes that the subject matter of this rule should be included in ARM 2.43.410 to better assist members in determining the type of documents that can be used to document public employment. Therefore, the board recommends that the language be included in ARM 2.43.410 and that ARM 2.43.428 be repealed.

2.43.429 FULL SALARY CREDIT FOR TEMPORARY WORK REDUCTIONS

AUTH: 19-3-304, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA
IMP: 19-3-308, 19-6-204, 19-7-203, 19-8-204, 19-9-204, 19-13-205, MCA

STATEMENT OF REASONABLE NECESSITY: The statutes this rule implements were repealed. Therefore, the rule is obsolete and should also be repealed.

2.43.430 OUT-OF-STATE OR FEDERAL PUBLIC SERVICE

AUTH: 19-2-403, 19-3-304, MCA
IMP: 19-3-512, 19-6-803, 19-8-903, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is proposed to be repealed as the process for purchasing all types of service is now in New Rule V.

2.43.520 ELECTION FOR GUARANTEED ANNUAL BENEFIT ADJUSTMENT COVERAGE (GABA)

AUTH: 19-2-403, 19-2-1101, 19-5-901, 19-6-710, 19-9-1009, 19-13-1010, MCA
IMP: 19-2-1101, 19-5-901, 19-5-902, 19-6-710, 19-6-711, 19-9-1009, 19-1010, 19-9-1013, 19-13-1010, 19-13-1011, MCA

STATEMENT OF REASONABLE NECESSITY: All GABA election periods have expired. The rule is no longer applicable or needed for MPERA to administer the retirement systems. Continued existence of the rule would only confuse members and perhaps mislead them to believe they remain eligible to elect to participate in GABA.

2.43.605 DESIGNATION OF BENEFICIARY

AUTH: 19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202, MCA
IMP: 19-3-1301, 19-5-602, 19-6-602, 19-7-602, 19-8-702, 19-9-912, 19-13-903, MCA

STATEMENT OF REASONABLE NECESSITY: The designation of beneficiary process for members is clearly set out in 19-2-801, MCA. No rule is needed.

2.43.606 CONVERSION OF OPTIONAL RETIREMENT

AUTH: 19-2-403, 19-5-701, 19-7-1001, 19-8-801, MCA
IMP: 19-3-1501, MCA

STATEMENT OF REASONABLE NECESSITY: Language regarding optional benefit conversion options for all applicable retirement systems is set forth in statute. This rule is inconsistent with those statutes. This rule must be repealed as it is wrong. A replacement rule is not required as statute covers the necessary details.

2.43.609 POST-RETIREMENT ADJUSTMENT

AUTH: 19-3-304, 19-7-201, 19-8-201, MCA
IMP: 19-3-1109, 19-3-1110, 19-3-1111, 19-7-708, 19-7-709, 19-7-710, 19-8-808, 19-8-809, 19-8-810, MCA

STATEMENT OF REASONABLE NECESSITY: Post retirement adjustments have been replaced by the guaranteed annual benefit adjustment (GABA). This rule is no longer necessary and should be repealed.

2.43.610 MINIMUM BENEFIT ADJUSTMENT FOR RETIREES WITH PART-PAID FIREFIGHTER SERVICE

AUTH: 19-13-202, MCA
IMP: 19-13-1007, 19-13-1009, MCA

STATEMENT OF REASONABLE NECESSITY: This rule mirrors statutory language and adds nothing of value. It should be repealed.

2.43.1030 TRANSFER OF DEFINED BENEFIT RETIREMENT PLAN FUNDS TO THE DEFINED CONTRIBUTION RETIREMENT PLAN FOR PREVIOUSLY INACTIVE MEMBERS

AUTH: 19-2-403, 19-3-2104, 19-3-2112, MCA
IMP: 19-3-2112, 19-3-2114, 19-3-2117, MCA

STATEMENT OF REASONABLE NECESSITY: The board proposes to repeal this rule as it is no longer necessary. Sections (1) through (3) pertain to the initial election window, which expired June 30, 2003, and are no longer needed. The remaining subsections are still applicable, but are adequately addressed in statute.

6. The department proposes to transfer the following rules:

OLD	NEW	
2.43.201	(2.43.1401)	MODEL PROCEDURAL RULE
2.43.202	(2.43.1402)	APPLICABILITY OF RULES
2.43.304	(2.43.1306)	REQUEST FOR RELEASE OF INFORMATION BY MEMBERS
2.43.512	(2.43.2705)	SUSPENSION OF DISABILITY BENEFITS -- NOTICE
2.43.513	(2.43.2706)	CANCELLATION OF DISABILITY BENEFITS FOR REFUSAL TO COMPLY -- NOTICE
2.43.901	(2.43.2201)	TREATING SALARY DEFERRALS UNDER A CAFETERIA PLAN AS COMPENSATION - POLICY AND OBJECTIVES

2.43.902	(2.43.2202)	TREATING SALARY DEFERRALS UNDER A CAFETERIA PLAN AS COMPENSATION - APPLICABILITY
2.43.909	(2.43.2209)	PROCEDURES - COMPENSATION MUST BE TREATED CONSISTENTLY
2.43.910	(2.43.2210)	PROCEDURES - PLANS THAT OFFER A CHOICE AMONG NONTAXABLE BENEFITS ONLY
2.43.911	(2.43.2211)	PROCEDURES - BONA FIDE CAFETERIA PLANS
2.43.1001	(2.43.3501)	ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT
2.43.1005	(2.43.3505)	ESTABLISHMENT OF LONG-TERM DISABILITY TRUST FUND
2.43.1023	(2.43.3523)	MEMBERSHIP IN OTHER TITLE 19 RETIREMENT PLANS
2.43.1024	(2.43.3524)	RETIREES NOT ENTITLED TO ELECTION
2.43.1025	(2.43.3525)	MONTANA UNIVERSITY SYSTEM EMPLOYEE ELECTIONS
2.43.1040	(2.43.3540)	DISABILITY BENEFITS FOR MEMBERS OF THE DEFINED CONTRIBUTION RETIREMENT PLAN
2.43.1105	(2.43.4610)	DROP PERIOD
2.43.1108	(2.43.4613)	DROP PARTICIPATION LIMITS
2.43.1110	(2.43.4615)	ESTIMATED MONTHLY DROP ACCRUAL
2.43.1113	(2.43.4618)	DISTRIBUTION OF DROP BENEFIT PURSUANT TO FAMILY LAW ORDER
2.43.1115	(2.43.4620)	EMPLOYMENT AFTER THE DROP PERIOD
2.43.1118	(2.43.4623)	GUARANTEED ANNUAL BENEFIT ADJUSTMENT INCREASES FOR DROP PARTICIPANTS
2.43.1119	(2.43.4624)	MINIMUM BENEFIT FOR DROP PARTICIPANTS
2.43.1702	(2.43.3004)	FAMILY LAW ORDERS -- GENERAL REQUIREMENTS
2.43.1705	(2.43.3009)	FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION FOR DEFINED BENEFIT PLANS
2.43.1801	(2.43.5101)	ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT

STATEMENT OF REASONABLE NECESSITY: These rules are proposed to be transferred as the Public Employees' Retirement Board is completely reorganizing and restructuring its rules. The proposed restructure will better align with the

statutes administered by the board and with the services provided by the board. Transfer of these rules, together with the restructuring of all board-administered rules, will enable MPERA employees, covered employers, and retirement system members to more easily locate rules applicable to their needs and situation.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; fax (406) 444-5428; or e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., October 17, 2008.

8. Angela Salvitti, Paralegal for the Montana Public Employee Retirement Administration, has been designated to preside over and conduct this hearing.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

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

11. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors were notified by United States Postal Service on November 9, 2007.

/s/ Melanie Symons
Melanie Symons, Legal Counsel and
Rule Reviewer

/s/ Jay Klawon
Jay Klawon
President
Public Employees' Retirement Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State September 2, 2008.

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

In the matter of the amendment and transfer of ARM 2.43.427 pertaining to reinstatement credit for lost time	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND TRANSFER

TO: All Concerned Persons

1. On October 3, 2008, at 9:00 a.m., the Montana Public Employees' Retirement Board will hold a public hearing in the board room at 100 North Park Avenue, Suite 200, Helena, Montana, to consider the proposed amendment and transfer of the above-stated rule.

2. The Montana Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Administration, no later than 12:00 p.m. on September 26, 2008, to advise us of the nature of the accommodation that you need. Please contact Angela Salvitti, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail asalvitti@mt.gov.

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

2.43.427 (2.43.2120) REINSTATEMENT -- CREDIT FOR LOST TIME (1) ~~A~~ An inactive member whose service ~~is~~ was involuntarily terminated and who is later ~~reinstated~~ returned to employment as the result of a suit, court order, ~~appeal~~ arbitration, or out-of-court settlement~~, to which the board is a party,~~ may petition the board for membership service ~~years~~ and ~~credits~~ service credit to be granted for the period of time lost, provided the member is awarded retroactive compensation ~~in settlement~~ as a result of ~~his~~ the claim. ~~Lump-sum awards not considered compensation under state and federal tax laws will not be considered compensation for the purposes of this rule.~~

(2) An involuntarily terminated member who retires prior to being returned to employment as the result of a suit, court order, arbitration, or out-of-court settlement and who is awarded retroactive compensation as a result of the claim may petition the board for membership service and service credit to be granted for the period of time lost, provided the member repays all retirement benefits, plus the actuarially-assumed rate of interest.

~~(2) The board will review among all relevant considerations, documentation provided by the member and will determine the appropriateness of granting service credits and membership service, and the amount of employee and employer contributions which must be paid to the retirement fund based upon the compensation awarded under (1) above and will credit proportional service time to~~

~~the member after all required contributions, including interest, have been paid.~~

(3) In order to receive full membership service and service credit, employee and employer contributions must be paid by the employer on the gross compensation the member would have received, including any interim earnings. Proportional service credit will be granted if employee and employer contributions are paid on a lesser amount of compensation. Any statutorily-required state contributions must also be received.

(4) Lump-sum awards not considered compensation under state and federal tax laws will not be considered compensation for the purposes of this rule.

AUTH: 19-2-403, ~~19-3-304, 19-5-201, 19-6-201, 19-7-201, 19-8-201, 19-9-201, 19-13-202,~~ MCA
IMP: ~~Title 19, Ch. 3, part 3, Ch. 5, part 3, Ch. 6, part 3, Ch. 7, part 3, Ch. 8, part 3, Ch. 9, part 4, Ch. 13, part 4~~ 19-2-303(47), MCA

STATEMENT OF REASONABLE NECESSITY: Current language in (1) is not clear regarding whether a member must be reinstated to employment in order to purchase the lost time. The board has determined that a member must actually return to employment in order to purchase the lost time as service credit. Otherwise, a member who merely receives damages for his or her termination but who does not return to work would be purchasing time for which no work could be considered to have been performed. The proposed changes clarify the requirement that the member must return to work.

Arbitration is proposed to be added to the list of possible proceedings as most collective bargaining agreements require termination matters to be arbitrated. The board proposes to repeal the language requiring that it be a party to the proceeding as the board is not and should not be a party to a termination proceeding unless the terminated person was a board employee. The purpose of the language is to ensure the board knows of and can administer the terms of the reinstatement and related service purchase. The purpose is being met by board staff reaching out to the employer and labor communities regarding the board's role in these decisions and by the requirement that the member petition the board in order to purchase the service.

Section (2) is needed to establish the process to be followed by members who retire between being terminated and being returned to employment. This is a unique circumstance that is not covered by (1) but which is occurring more frequently as our members age.

If (1) is amended as proposed, the generic language in current (2) will no longer be needed. The amount of contributions and service will be based on the member's actual service. The board proposes that current (2) be repealed and replaced with (3). Section (3) establishes the process to be followed to ensure contributions related to the restored service are picked up by the employer.

Contributions related to membership service and service credit must be "picked-up"

for IRS qualification purposes.

Section (4) provides further clarification that not all termination awards will be considered compensation for retirement system purposes.

This rule is proposed to be transferred as the Public Employees' Retirement Board is completely reorganizing and restructuring its rules. The proposed restructure will better align with the statutes administered by the board and with the services provided by the board. Transfer of this rule, together with the restructuring of all board-administered rules, will enable the Montana Public Employees' Retirement Administration employees, covered employers, and retirement system members to more easily locate rules applicable to their needs and situation.

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: Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; fax (406) 444-5428; or e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., October 17, 2008.

5. Angela Salvitti, Paralegal for the MPERA, 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 2 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ Melanie Symons
Melanie Symons, Legal Counsel and
Rule Reviewer

/s/ Jay Klawon
Jay Klawon, President
Public Employees' Retirement Board

/s/ Michael P. Manion
Michael P. Manion, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State September 2, 2008.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the proposed amendment of ARM 4.14.303 and 4.14.305, and repeal of ARM 4.14.304 relating to Montana agricultural loan authority	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On October 2, 2008, at 3:00 p.m., the Montana Department of Agriculture will hold a public hearing in Room 225 of the Scott Hart Building, 303 N. Roberts at Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Agriculture will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Agriculture no later than 5:00 p.m. on September 25, 2008, to advise us of the nature of the accommodation that you need. Please contact Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Phone: (406) 444-3144; Fax: (406) 444-5409; or e-mail: agr@mt.gov.

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

4.14.303 LOAN MAXIMUMS (1) Maximum amounts which may be loaned to a beginning farmer/rancher are:

(a) No more than an aggregate of ~~$250,000~~ 450,000 may be used to purchase agricultural land, agricultural improvements, and depreciable agricultural property; and

(b) remains the same.

AUTH: 80-12-103, MCA
IMP: 80-12-103, MCA

REASON: The 2008 United States Farm Bill increased the maximum real property loan limits from $250,000 to $450,000. This limit is regulated by the U.S. Internal Revenue Service, hence, the department needs to adjust the rules to correctly reflect the current loan limit.

4.14.305 APPLICANT ELIGIBILITY (1) Basic program applicant eligibility requirements are:

~~(a) The beginning farmer/rancher may not have a net worth in excess of $250,000;~~

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

AUTH: 80-12-103, MCA
IMP: 80-12-203, 80-12-204, MCA

REASON: The net worth requirement is listed in statute; therefore, there is no need for it to be in the rule.

4. The department proposes to repeal the following rule:

4.14.304 LOAN MINIMUMS

AUTH: 80-12-103, MCA
IMP: 80-12-103, MCA

REASON: The Beginning Farm/Ranch loan program does not have a minimum loan amount requirement and therefore needs to repeal the rule.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Cort Jensen at the Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov. Any comments must be received no later than October 9, 2008.

6. The Department of Agriculture 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, e-mail, and mailing address of the person 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 Montana Department of Agriculture, 303 North Roberts, P.O. Box 200201, Helena, MT 59620-0201; Fax: (406) 444-5409; or e-mail: agr@mt.gov or may be made by completing a request form at any rules hearing held by the Department of Agriculture.

7. An electronic copy of this Notice of Public Hearing on Proposed Amendment and Repeal is available through the department's web site at www.agr.mt.gov, under the Administrative Rules section. 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 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.

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

DEPARTMENT OF AGRICULTURE

/s/ Ron de Yong
Ron de Yong, Director

/s/ Cort Jensen
Cort Jensen, Rule Reviewer

Certified to the Secretary of State, September 2, 2008.

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.30.617 and 17.30.638 pertaining to outstanding resource water designation for the Gallatin River	NOTICE OF EXTENSION OF COMMENT PERIOD ON PROPOSED AMENDMENT (WATER QUALITY)

TO: All Concerned Persons

1. On October 5, 2006, the Board of Environmental Review published MAR Notice No. 17-254 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 2294, 2006 Montana Administrative Register, issue number 19. On March 22, 2007, the board published MAR Notice No. 17-257 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 328, 2007 Montana Administrative Register, issue number 6. On September 20, 2007, the board published MAR Notice No. 17-263 regarding a notice of extension of comment period on the proposed amendment of the above-stated rules at page 1398, 2007 Montana Administrative Register, issue number 18. On March 13, 2008, the board published MAR Notice No. 17-268 extending the comment period on the proposed amendment of the above-stated rules at page 438, 2008 Montana Administrative Register, issue number 5.

2. During the initial comment period, the board received a number of comments opposing adoption of the proposed rule amendments on grounds that the amended rules would render a number of properties in the Big Sky area undevelopable. The draft environmental impact statement on the proposed rule amendments indicates that the rule amendments would not preclude full development in the Big Sky area if certain mechanisms, such as central sewers and advanced treatment, are implemented. However, the record did not indicate whether regulatory or other means to require or facilitate implementation of these mechanisms are feasible. At the close of the initial comment period, the board was notified that the original petitioners for this rulemaking and developers were discussing means of accomplishing this goal. For that reason, the board extended the comment period to July 2, 2007. During the second comment period, the board received comments indicating that the discussions had been continuing, that progress was being made, and that an engineering feasibility study was underway. The commentors requested further extension of the comment period. The board granted their request and extended the comment period to January 4, 2008. On January 4, 2008, the board received a comment indicating that the feasibility study will be completed in May of 2008 and requesting that the comment period be further extended. The board has granted this request and is extending the comment period to July 18, 2008. On July 2, 2008, the board received a comment indicating that the feasibility study would be completed in July and requesting a further extension of the comment period. The board has granted this request.

3. Written data, views, or arguments may be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana, 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than January 2, 2009. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

4. The board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking action or need an alternative accessible format of this notice. If you require an accommodation, contact the board no later than 5:00 p.m., October 10, 2008, to advise us of the nature of the accommodation that you need. Please contact the board secretary at P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2544; fax (406) 444-4386; or e-mail ber@mt.gov.

Reviewed by: BOARD OF ENVIRONMENTAL REVIEW

/s/ John F. North BY: */s/ Joseph W. Russell*
JOHN F. NORTH JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer Chairman

Certified to the Secretary of State, September 2, 2008.

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

In the matter of the proposed adoption of New Rules I through XVIII pertaining to the selection, implementation, and reporting of real estate projects on state trust lands	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

To: All Concerned Persons

1. On October 2, 2008, at 2:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the DNRC Bannack Conference Room, 1625 Eleventh Avenue, Helena, Montana, to consider the adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on September 30, 2008, to advise the agency of the nature of the accommodation that you need. Please contact Ethan Stapp, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT, 59620; telephone (406) 444-0518; fax (406) 444-2684; or e-mail estapp2@mt.gov.

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

NEW RULE I DEFINITIONS As used in this subchapter, the following definitions apply, except where the context clearly indicates otherwise:

(1) "Board" means the state Board of Land Commissioners.

(2) "Bureau" means the Real Estate Management Bureau of the Trust Lands Management Division of the Department of Natural Resources and Conservation.

(3) "Cluster development" means a subdivision of a tract with building lots concentrated on a portion of the tract and the remainder conserved for open space.

(4) "Commercial" means the operation by any for-profit entity of any public parking lot, restaurant, bar, hotel, motel, office space, retail store or sales outlet, storage space, gas station, convenience store, shopping center, industrial enterprise, warehouse, hospitality enterprise, or concentrated recreational use, multifamily residential use, or other similar uses.

(5) "Conservation" means a land use for open space, preservation of habitat, natural areas, parks, or related public purposes, secured through lease, license, easement, or other legal instrument consistent with 77-1-203, MCA, for multiple use management. Limited commercial or residential uses may be allowed in conjunction with conservation uses.

(6) "Conservation entity" means a public entity or private organization qualified per Title 76, chapter 6, MCA, to acquire or designate interests and rights in real property to provide or preserve open space.

(7) "Department" means the Department of Natural Resources and Conservation.

(8) "Division" means the Trust Land Management Division of the department.

(9) "Entitlement" means an approval or permit obtained from a local government that provides a right to annex, zone, or subdivide a tract of land.

(10) "Environmental review" means a written document as defined in 75-1-220(4), MCA.

(11) "Growth policy" means a document adopted under Title 76, chapter 1, part 6, MCA.

(12) "Isolated tract or land" means any state land not possessing a legal right of access by the public, as provided in 77-2-361(1), MCA.

(13) "Joint venture" means a partnership between the department and another entity or entities to undertake a development project, each contributing equity and sharing in the revenues, expenses, and control of the project.

(14) "Land classification" means categorizing land according to its principal value, as defined in 77-1-401, MCA.

(15) "Lease" means a contract by which the board conveys a limited property interest in state lands for a term of years, for a specified rental, and for a use for which the land is classified.

(16) "License" means a contract by which the department conveys a limited property interest in state lands for a specific term and fee, and for a use other than that for which the land is classified.

(17) "MEPA" means The Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, MCA.

(18) "Other (land)" means a land classification that encompasses residential, commercial, industrial, and conservation uses.

(19) "Project" means a proposal to issue a lease or easement for a commercial, residential, or conservation use on a tract where no such lease or easement existed previously, when the one or more of the following are required by a local government in order for the lease or easement to be issued as proposed:

(a) final subdivision approval;

(b) annexation; or

(c) development or amendment of a growth policy or neighborhood plan. Project also means the development of entitlements on lands proposed for sale or exchange.

(20) "Public entity" means a federal agency, state agency, a political subdivision of the state including a county, city, town, municipal corporation, a school district or other special district, a joint agreement entity, a public authority, or any other public body of this or other state.

(21) "Public facility" means a building or area operated by a public entity.

(22) "Purchase of development rights" means acquiring one or more of the fee-simple interests associated with a parcel of land, such as the commercial or residential development rights.

(23) "Rate of return" means the ratio of income received from a project relative to the value of the asset or equity contribution, expressed as a percentage.

(24) "Real estate activities" means the following:

(a) land sales and land banking;

(b) land exchanges;
(c) issuance of easements;
(d) issuance of leases;
(e) issuance of land use licenses;
(f) marketing of state trust lands proposed for lease, license, or easement, sale, or exchange;
(g) requests for proposals;
(h) planning and design;
(i) surveying and platting;
(j) development of entitlements;
(k) extension of services and infrastructure;
(l) contracting for services; and
(m) environmental review.

(25) "Real Estate Management Plan (plan)" means the PEIS for real estate for the department and the associated Record of Decision (ROD) approved July 18, 2005.

(26) "Receiving area" means land that receives additional development rights from land within a sending area. This is a component of a program providing for the transfer of development rights.

(27) "Residential" means single family dwellings, duplexes, condominiums, townhouses, cabins, associated ancillary uses, or other residential uses recognized by local zoning regulations.

(28) "Rural" means a tract that does not meet the criteria for an urban tract.

(29) "Sending area" means land that provides additional development rights to other land within a receiving area. This is a component of a program providing for the transfer of development rights.

(30) "Subdivision" means a division of land defined by 76-3-103(15), MCA.

(31) "Subdivision review" means a city, town, or county governing body evaluating a subdivision proposal for compliance with the jurisdiction's subdivision regulations.

(32) "Threshold" means a predefined target for acres of trust land to be developed for commercial or residential uses that, if met before July 18, 2025, may require a programmatic review of the plan.

(33) "Tract" means a parcel of land that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder's office or in the department's records.

(34) "Transfer of development rights" means separating some or all of the development rights from a parcel of land in a "sending area" and transferring those rights to a parcel in a "receiving area," where additional development density is allowed.

(35) "Urban" means a tract meeting one or more of the following criteria:
(a) within the boundaries of an incorporated city or town;
(b) within 4.5 miles of the boundaries of an incorporated city or town;
(c) within a public sewer or water district; or
(d) within one mile of the boundaries of a public sewer or water district. An entire tract of state trust land is urban if any portion of the tract falls within an area described in (35)(a) through (d).

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-904, MCA

REASONABLE NECESSITY: This rule is necessary to define terms used in the body of NEW RULES II through XVIII.

NEW RULE II ACCOUNTABLE PARTIES (1) The board adopts the rules in this subchapter to provide the Trust Land Management Division of the Montana Department of Natural Resources and Conservation with consistent policy, direction, and guidance when selecting and implementing Real Estate Management Bureau projects on state trust lands.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-904, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to provide the Trust Land Management Division with rules to assist in the implementation of real estate projects on state trust lands.

NEW RULE III GENERAL APPLICABILITY (1) The Real Estate Management Plan (plan) rules, [NEW RULE I] through [NEW RULE XVIII], implement the Programmatic Environmental Impact Statement (PEIS) and the associated Record of Decision (ROD) adopted July 18, 2005.

(2) The department shall exempt projects from [NEW RULE I] through [NEW RULE XVII] that, prior to adoption of the ROD, have been subject to public scoping and environmental review processes under MEPA, section 75-1-201, et seq., MCA; or

(a) received all local government approvals necessary for the completion of the project.

(3) The department shall exempt from [NEW RULE I] through [NEW RULE XVII]:

(a) lease lots created prior to adoption of the ROD; and

(b) land use licenses.

(4) These rules shall not apply where it is determined that their application would directly violate the state's fiduciary duty to a trust beneficiary under Article X, Section 4 or 11, of the Montana Constitution, or Section 11 of the Montana Enabling Act.

(5) These rules remain in effect until July 18, 2025, whereupon they shall expire.

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish the applicability of NEW RULES I through XVII, and to establish the date on which these rules will expire. This rule is consistent with the standards set forth in the

Programmatic Environmental Impact Statement, Record of Decision (ROD). The department director adopted the ROD July 18, 2005.

NEW RULE IV GENERAL DEVELOPMENT STANDARDS (1) The department will actively pursue commercial, residential, and conservation uses to increase revenue on trust lands, through one or more of the following means:

(a) targeting those tracts most suitable for development;

(b) improving entitlements on tracts selected for sale or development, when appropriate; and

(c) prioritizing projects with the highest financial return per acre.

(2) The department will give priority to urban projects over rural projects using the following criteria:

(a) financial rate of return per acre; and

(b) funding availability.

(3) The department will implement the following standards when selecting, designing, and implementing projects on state trust lands, whenever appropriate and feasible:

(a) projects should be contiguous to or part of existing or proposed development;

(b) projects in urban locations must connect to existing public infrastructure and be designed to public standards, including alignment to adjoining public and private streets;

(c) urban projects should achieve urban densities;

(d) the department will promote mixed use in urban locations through planned-unit development or other means provided by local land-use regulations;

(e) the department will comply with local land-use regulations in developing commercial, residential, and conservation uses on state trust lands;

(f) the department will utilize local land use planning and regulatory processes to involve the general public and beneficiaries in developing state trust lands for commercial, residential, and conservation uses;

(g) the department will coordinate environmental review with local regulatory review;

(h) the department may use or promote purchase of development rights, transfer of development rights, cluster development, joint ventures, or other measures; and

(i) the department will coordinate with local communities, other state and federal agencies, conservation agencies, and other interest groups to provide for notice and review as necessary.

(4) Any commercial or residential lease expected to generate annual revenue in excess of $50,000 may not be issued without the board's prior approval.

(a) The board delegates its authority to the department to issue commercial leases expected to generate $50,000 or less annually, but the board reserves the authority to subsequently review the issuance of such leases.

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA
IMP: 77-1-605, 77-1-904, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish the standards to be applied by the department in development of commercial, residential, and conservation uses on state trust lands. This rule also establishes that the department will have the authority, subject to review by the Land Board, to issue commercial leases expected to generate $50,000 or less annually. This rule is consistent with the standards set forth in ROD.

NEW RULE V PROJECT EVALUATION, REVIEW, AND SELECTION PROCESS (1) [NEW RULE VI] through [NEW RULE X] describe the evaluation, review, and selection process for projects on state trust lands.

(2) The department will require [NEW RULE VI] through [NEW RULE X] for projects initiated following [the effective date of these rules].

(3) The individual real estate activities that together culminate in a lease or easement are cumulatively referred to as a project.

(a) The department will not require [NEW RULE VI] through [NEW RULE X] for an individual real estate activity that:

(i) is consistent with a larger project that has undergone project evaluation and review as described in [NEW RULE VI] through [NEW RULE X]; and

(ii) has been approved by the project identification team described in [NEW RULE VIII].

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish that "projects" as defined in NEW RULE I will go through the process described in NEW RULE VI through NEW RULE X. It is not mandatory for a department activity to meet the requirements of NEW RULE VI through NEW RULE X if it does not fall within the definition of a project.

NEW RULE VI SITE-SPECIFIC EVALUATION (1) The department will conduct a site-specific evaluation to assess the suitability of a tract or portion of a tract proposed for a project. The site-specific evaluation may include the following factors:

(a) unique or sensitive biological and physical features;

(b) topography;

(c) influence of floodplains and/or wetlands;

(d) hazardous geologic conditions;

(e) known cultural or historic features through a preliminary cultural survey;

(f) proximity to other public lands or private lands under conservation easement, as documented by information in the Montana Natural Heritage Program database or similar source;

(g) water availability and water rights;

(h) existing and required access;

(i) the location of infrastructure, such as roads, utilities, power, telephone, public water, or sewer availability;

(j) any existing encumbrances;

(k) proximity to community infrastructure and utilities; and

(l) other nearby residential or commercial development, proposed or existing.

(2) The department will analyze federal, state, and local land-use regulations, plans, and policies, for their relationship to the proposed project. This analysis must identify existing entitlements and any entitlements that must be acquired for the proposed project to achieve the highest return.

(3) The department may conduct a market analysis for a parcel proposed for commercial, residential, or conservation use. At minimum, the market analysis must identify:

(a) the size of the current and future residential and commercial market;

(b) market-growth trends, historic and future; and

(c) expected rate of return.

(4) The department will promote appropriate development on state trust land by generally excluding from consideration:

(a) residential and commercial uses on slopes greater than 25 percent;

(b) residential and commercial projects that would be located in a designated 100-year floodplain or wetland; and

(c) most commercial or residential projects that would adversely affect federally listed threatened and endangered species or critical habitat for threatened and endangered species as designated by the United States Fish and Wildlife Service (USFWS).

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish the criteria that will be considered by the department when evaluating individual project proposals on state trust lands. This rule is consistent with the ROD.

NEW RULE VII SITE SELECTION REPORT (1) Field staff will develop a site selection report for each project proposal that will include these elements:

(a) how the proposed project conforms to the standards in [NEW RULE IV];

(b) description of the proposed project, including proposed land use, density, existing and proposed entitlements, required infrastructure improvements, local regulatory approval required, and potential rates of return from the project, if implemented;

(c) how the proposed project relates to [NEW RULE XI] and [NEW RULE XII];

(d) results of the site-specific evaluation;

(e) estimate of the costs and timeline for the proposed project; and

(f) how the proposed project integrates with other trust land management projects or programs.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish that department field staff will develop a report for each project proposal being considered, and to describe the elements that will be included in the report. This rule is consistent with the ROD.

NEW RULE VIII PROJECT IDENTIFICATION TEAM AND PROJECT REVIEW COMMITTEE (1) The department will form a project identification team, comprised of, but not limited to bureau staff and field representatives.

(2) The project identification team will meet annually, at minimum. The duties of the project identification team will include:

(a) reviewing and selecting projects proposed by field staff;

(b) reviewing the status of previously selected projects;

(c) canceling previously selected projects; and

(d) assigning resources.

(3) The project identification team will select projects based upon review of the site selection reports developed by field staff under [NEW RULE VII], in consideration of the following criteria:

(a) conformance to the standards in [NEW RULE IV];

(b) relationship to [NEW RULE XI and XII];

(c) results of the site-specific evaluation;

(d) results of the market analysis, as described in [NEW RULE VI(3)];

(e) staffing and funding needs and limitations;

(f) project complexity;

(g) project timeline; and

(h) how the proposed project integrates with other trust land management projects or programs.

(4) The department will form a project review committee, comprised of bureau staff and planning and land use staff from each area office. The project review committee will meet annually, at minimum. The duties of the project identification team will include:

(a) reviewing the status of previously selected projects;

(b) assessing resource needs of projects; and

(c) recommending project proposals to the project identification team.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to establish a project identification team and project review committee, and to describe the duties of each. This rule is consistent with the ROD.

NEW RULE IX PROJECT MANAGEMENT LIST (1) The department will provide to the board a list of the projects selected by the project identification team within 30 days, and concurrently send the list to:

(a) affected lessees and licensees;

(b) local governments having jurisdiction over the area of a selected project;

(c) public and private conservation entities; and

(d) other interested parties.
(2) The department will post the list on the department's web site.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to delineate the process by which the department will inform the Land Board and the public at large when commercial, residential, and conservation projects are proposed on school trust lands. This rule is consistent with the ROD.

NEW RULE X NOTIFICATION OF CONSERVATION INTEREST (1) After posting a project management list on the department's web site pursuant to [NEW RULE VIII], the department shall allow conservation entities 60 days in which to propose a conservation use of those lands by issuing a letter of intent to the department. By such a letter of intent, an entity may seek to secure for conservation uses any tract or portion of a tract proposed by the project identification team for a residential or commercial use.

(2) A conservation entity submitting a letter of conservation intent during the 60 days has an additional 45 days in which to apply to the department for a lease, license, easement, or other approved legal instrument to secure conservation use, as approved by the department. The 45 days begin on the day following the last day of the 60-day period. An entity applying within the 45-day period has 12 months to secure conservation use. The department may extend the 12 month period.

(a) The department may require bonding, letter of credit, or nonrefundable deposit as part of the application for a conservation use.

(3) Any project on the project management list may proceed forward if:

(a) the department receives no letter of intent within the 60-day period;

(b) a conservation entity submits a letter of intent within the 60 days but fails to apply to the department within the subsequent 45 days; or

(c) a conservation entity submits a letter of intent and application within the applicable periods but fails to secure conservation use on the subject property within 12 months, unless the department has granted an extension.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to implement the ROD provisions for informing conservation entities in advance of initiating a commercial or residential project on state trust land. Entities may respond with a letter of interest to secure a conservation use, and are given specific periods of time to apply for a conservation interest and complete the transaction. This rule is consistent with the ROD.

NEW RULE XI NEW DEVELOPMENT THRESHOLDS (1) If the aggregate acreage of real estate activities described in (2) exceeds, or is anticipated to exceed

during the term of the plan, 30,000 acres, the department will conduct a programmatic review of the plan before any additional projects may be developed.

(a) The department will also conduct a programmatic review of the plan before any additional projects may be developed, if the aggregate acreage in rural areas exceeds, or is anticipated to exceed during the term of the plan, five percent of the 30,000-acre statewide threshold.

(2) The following, as a result of new projects developed after July 18, 2005, will count toward the thresholds in (1) and (2):

(a) tracts leased or under easement for commercial uses;

(b) tracts leased or under easement for residential uses at a density greater than one residential unit per 25 acres;

(c) tracts disposed of through sale or exchange, and subdivided or developed for a commercial use within five years following sale; and

(d) tracts disposed of through sale or exchange, and subdivided or developed for residential use at a density greater than one residential unit per 25 acres within five years following sale.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: It is reasonably necessary to adopt this new rule to establish that a programmatic review of the plan may be necessary when the acreage thresholds provided in the ROD are met. Setting forth the requirements will enable staff to reevaluate the plan in compliance with the ROD findings. This rule is consistent with the ROD.

NEW RULE XII NEW DEVELOPMENT THRESHOLD EXEMPTIONS

(1) The following will be exempt from the thresholds in [NEW RULE XI(1)]:

(a) leases, sales, exchanges, and easements to a public entity, for a public facility, community service, public benefit, or for a private sewer or water system;

(b) acres under lease or easement for communications facilities, or for wind, geothermal, or solar power generation;

(c) acres under easement for public or private rights-of-way;

(d) acres secured for conservation use;

(e) tracts disposed of through sale or exchange with restrictions limiting residential density to one residential unit per 25 acres, or limiting development to not more than 25 percent of the tract and designating the remainder as open space;

(f) isolated tracts sold or exchanged;

(g) acres dedicated as open space during subdivision review in excess of minimum state and local requirements;

(h) tracts subdivided for residential lease or easement, limiting density to one residential unit per 25 acres, or limiting development to 25 percent of the tract and designating the remainder as open space;

(i) tracts within a receiving area established by a local jurisdiction as part of a transfer of development rights program, and subdivided for residential use using development rights transferred from land in the sending area; and

(j) tracts subdivided for residential development at a density greater than one unit per 25 acres using development rights transferred, at a rate of one development right per 25 acres of lands protected, from another tract of state trust land. This exemption applies to lands subdivided for lease, easement, or sale, and includes lands subdivided within five years following sale.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: The ROD exempts certain activities from the thresholds. This rule is reasonably necessary to establish those exemptions. This rule is consistent with the ROD.

NEW RULE XIII ACCOUNTING AND REPORTING (1) The department will account for real estate management activities that meet [NEW RULE X] and [NEW RULE XI]. In addition, the department will account for the following:

(a) acres under commercial or residential lease where no commercial or residential lease existed previously;

(b) acres under easement for commercial or residential use;

(c) nonisolated tracts sold and subdivided for residential or commercial use within five years of sale;

(d) tracts acquired with existing commercial or residential development;

(e) tracts, or portions of tracts, encumbered or purchased with an existing conservation lease, license, easement, or other means of securing conservation uses;

(f) nonisolated tracts sold and encumbered with a restriction on development for conservation uses within five years of sale;

(g) acres dedicated as open space during subdivision review in excess of minimum requirement; and

(h) acres designated as "Natural Area" per Title 77, chapter 12, part 1, MCA.

(2) The department may account for other land use, development, and disposition in other department documentation, such as annual reports.

(3) The department will report the results of the accounting to the board by August 2010 and every five years thereafter.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: It is reasonably necessary to adopt this new rule to clearly establish the requirements for accounting and reporting of project information every five years beginning in 2010, as provided in the ROD. This rule is consistent with the ROD.

NEW RULE XIV MANAGEMENT OF THE REAL ESTATE MANAGEMENT PLAN (1) In July 2010 and every five years thereafter, the Real Estate Management Bureau will issue a report upon the implementation and effectiveness

of the plan, including a recommendation on the need for significant changes to the plan.

(2) Upon review of such reports, the board or the department may consider a programmatic review of the plan for any of the following reasons:

(a) the thresholds in [NEW RULE XI(1)] have been exceeded;

(b) new legislation is adopted that is incompatible with the selected alternative;

(c) the board provides new direction; or

(d) the Trust Land Management Division administrator judges that the original assumptions supporting the plan no longer apply.

(3) The department may implement and initiate projects during a programmatic review of the plan.

(4) The department may make minor changes or additions to the plan without a programmatic review of the entire plan, as long as those changes are compatible with the overall plan, as determined by the department.

(a) Cumulative minor changes may result in the department's programmatic review of the plan.

AUTH: 77-1-209, 77-1-301, 77-1-603, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: It is reasonably necessary to adopt this new rule to establish that the bureau will review the ongoing implementation of the plan, and issue a report of its review findings, every five years beginning in 2010. The rule further establishes the criteria that the board or department may use when considering a programmatic review of the plan based upon the bureau's findings. This rule is consistent with the ROD.

NEW RULE XV MINIMUM LEASE CALCULATION (1) Pursuant to 77-1-905(2), MCA, the department will set the minimum annual rent for any commercial lease to obtain the full market value of that lease. Such rental shall be at a rate not less than the product of the appraised value of the land multiplied by a rate that is 2 percentage points a year less than the current federally-guaranteed, annual, 20-year bond rate provided by the Montana Board of Investments commercial loan rate sheet. For the purpose of calculating the minimum annual rent, the department may round the 20-year rate to the nearest whole number.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, 77-1-912, MCA

REASONABLE NECESSITY: This rule is necessary to clarify the requirements of 77-1-905(2), MCA, to eliminate potential confusion.

NEW RULE XVI SURVEYING AND PLATTING OF LANDS PRIOR TO SALE

(1) The board delegates to the department, subject to its review, its authority under 77-1-301, 77-2-309, and 77-2-310, MCA, to determine whether it is in the best

interest of the trust beneficiaries to survey, plat, or create blocks and lots of state lands prior to sale.

(a) State trust lands may be sold under the Land Banking Program without added entitlements where:

(i) it is in the best interest of the trust beneficiaries;

(ii) additional entitlements are not in the interests of a local jurisdiction; or

(iii) staff and budget constraints make it impractical to seek entitlements.

AUTH: 77-1-301, 77-2-309, 77-2-310, MCA
IMP: 77-1-301, 77-2-309, 77-2-310, MCA

REASONABLE NECESSITY: This rule is necessary to provide the department authority, subject to board review, to determine which tracts proposed for sale may be surveyed and platted in advance of taking the sale proposal to the board for approval. The rule further specifies the criteria that may be used to determine when to survey and plat tracts proposed for land banking.

NEW RULE XVII APPRAISAL OF LAND PRIOR TO LEASE OR EASEMENT (1) Prior to offering a lease for competitive bid or an easement for sale, the department shall appraise the parcel under consideration for lease or issuance of an easement. The department may conduct the appraisal or the department may contract with a Montana-licensed certified general appraiser. The department shall review and approve an appraisal conducted by a contract appraiser.

(2) The appraisal must:

(a) include state owned improvements in the valuation; and

(b) use comparable sales for like properties.

(3) Appraisals must be updated or parcels reappraised:

(a) where issuing a lease, if the appraisal is older than two years; and

(b) where issuing an easement, if the appraisal is older than one year.

(4) Appraisals may be updated or reappraised earlier than as required in (3)(a) and (b).

(5) Appraisals for sales, exchanges, and land banking are governed by ARM 36.25.805.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is necessary to clarify that an appraisal has a limited life span, and the value it provides can, after a time, no longer ensure a fair return for use of state trust lands. Appraisals used to value easements and leases on state trust lands will be renewed or reviewed if older than one year, or two years, respectively.

NEW RULE XVIII CATEGORICAL EXCLUSIONS (1) Real estate management activities that are classified as categorical exclusions shall not require an environmental assessment or environmental impact statement.

(a) Categorical exclusions include activities on state trust lands conducted by others under the authority of the department as well as activities conducted by the department itself.

(2) Categorical exclusions shall not apply in extraordinary circumstances where the Real Estate Management Bureau is proposing an activity:

(a) upon sites with high erosion risk;

(b) where federally listed threatened and endangered species or critical habitat for threatened and endangered species, as designated by the USFWS, may be affected;

(c) where Native American religious and cultural sites may be affected;

(d) where archaeological sites may be affected;

(e) where historic properties and areas may be affected;

(f) where several related, categorically-excluded individual activities may cumulatively result in significant impacts to the human environment because they will either occur close in time or in the same geographic area. Such related actions may be subject to environmental review even if they are not individually subject to review; or

(g) where the activity would result in a violation of any applicable state or federal laws or regulations.

(3) Pursuant to 77-1-121, MCA, and ARM 36.2.523(5), the board adopts the following additional categorical exclusions for real estate management activities conducted upon state trust lands:

(a) lease and license administration including review, inspection, amendments, assignments, renewals, and enforcement of terms and conditions;

(b) department review and approval of lease or license modifications, improvements, removal of improvements, and new utility service connections, consistent with applicable regulations;

(c) adjustments to the boundaries of existing leases or licenses, consistent with applicable regulations;

(d) planning and design;

(e) project evaluation under [NEW RULE VI];

(f) development of a site selection report under [NEW RULE VII];

(g) project selection under [NEW RULE VIII];

(h) development of the project management list under [NEW RULE IX];

(i) marketing of state trust lands proposed for lease, license, or easement;

(j) short-term land use licenses, involving no resource extraction or developed uses, and conforming to local permitting and land use regulations; and

(k) other real estate management activities on state trust lands that are not in connection to:

(i) a department proposal for a sale, exchange, easement, placement of improvement, lease, license, or permit; or

(ii) a department review of an application for authorization of a sale, exchange, easement, placement of improvement, lease, license, or permit.

AUTH: 77-1-209, 77-1-301, MCA
IMP: 75-1-201, 77-1-121(4), 77-1-605, 77-1-903, MCA

REASONABLE NECESSITY: This rule is reasonably necessary to implement the categorical exclusions evaluated in the PEIS adopted July 18, 2005. These activities have been determined through the PEIS to not have effects on the human or natural environment.

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 Ethan Stapp, Department of Natural Resources and Conservation, 1625 Eleventh Avenue, Helena, MT 59620; telephone (406) 444-0518; fax (406) 444-2684; or e-mailed to estapp2@mt.gov, and must be received no later than 5:00 p.m. on October 9, 2008.

5. Ethan Stapp, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

6. An electronic copy of this Notice of Public Hearing on Proposed Adoption is available through the department's web site at http://www.dnrc.mt.gov. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Adoption 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.

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 sent 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. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was notified by telephone on August 25, 2008.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Tommy H. Butler
TOMMY H. BUTLER
Rule Reviewer

Certified to the Secretary of State on September 2, 2008.

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

In the matter of the amendment of ARM 37.78.102, 37.78.415, 37.78.506, and 37.78.833 pertaining to Temporary Assistance for Needy Families (TANF)	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On October 3, 2008, at 2:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the Wilderness Room of the Colonial Building, at 2401 Colonial Drive, 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 the Department of Public Health and Human Services no later than 5:00 p.m. on September 22, 2008, to advise us of the nature of the accommodation that you need. Please contact Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, Montana, 59620-2951; telephone (406)444-9503; fax (406)444-6744; or e-mail dphhslegal@mt.gov.

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

37.78.102 TANF: FEDERAL REGULATIONS ADOPTED BY REFERENCE

(1) remains the same.

(2) The "Montana TANF Cash Assistance Manual" dated ~~July 1, 2008~~ January 1, 2009 is adopted and incorporated by this reference. A copy of the Montana TANF Cash Assistance Manual is available for public viewing at each local Office of Public Assistance, and at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., 5th Floor, P.O. Box 202925, Helena, MT 59620-2925. Manual updates are also available on the department's web site at www.dphhs.mt.gov.

AUTH: 53-4-212, MCA
IMP: 53-4-211, 53-4-601, MCA

37.78.415 TANF: TANF CASH ASSISTANCE; EXCLUDED EARNED INCOME (1) through (2)(c) remain the same.

(d) all Workforce Investment Act (WIA) work experience income; ~~and~~

(e) all work-study earnings or payments received by a postsecondary

student, regardless of the payment source.; and

(f) all earned income received by a temporary census employee.

AUTH: 53-4-212, MCA
IMP: 53-4-211, 53-4-601, MCA

37.78.506 TANF: TANF CASH ASSISTANCE; SANCTIONS (1) If any member of the assistance unit fails or refuses without good cause as defined in ARM 37.78.508 to comply with an allowable work activity as defined in (8), or to provide verification and/or documentation of participation in the activities, a sanction will be imposed on the individual. The first sanction will result in the reduction of the monthly TANF Cash Assistance payment by an amount equal to one person's share of the payment for one month. The second sanction will result in case closure and the imposition of a one month ineligibility period against all individuals who are considered to be a TANF recipient in the household at the time of the sanction, all individuals who were required filing unit members at the time of the sanction or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The third sanction will result in case closure and the imposition of a three month ineligibility period against all individuals who are considered to be a TANF recipient in the household at the time of the sanction, all individuals who were required filing unit members at the time of the sanction, or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The fourth and subsequent sanctions will result in a six months ineligibility period against all individuals who are considered to be a TANF recipient in the household at the time of the sanction, all individuals who were required filing unit members at the time of the sanction, or individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of sanction. The ineligibility period will follow the required filing unit members or individual(s) even if they move to another household and apply for benefits as part of that household, with the following exceptions:

(a) through (10) remain the same.

AUTH: 53-4-212, MCA
IMP: 53-4-211, 53-4-601, 53-4-608, 53-4-717, MCA

37.78.833 TANF CASH ASSISTANCE POST-EMPLOYMENT PROGRAM

(1) through (1)(a)(ii) remain the same.

(b) ~~the household~~ no adult household member who is receiving TANF cash assistance benefits (coded "IN") or who has been disqualified (coded "DQ") has ~~not~~ received ~~at least one month of~~ TANF cash assistance post-employment benefits in the prior 12 months;

(c) through (3) remain the same.

(4) The Post-Employment Program is a time-limited program. Households that are eligible for this program may receive up to three months of benefits. Payment standards for the Post-Employment Program are outlined in ARM 37.78.420. For each month of assistance provided under the Post-Employment

Program, the time clock of the individuals receiving assistance will increment as outlined in ARM 37.78.201. However, households may not exceed their 60-month time clock by receipt of a post-employment benefit.

(5) and (6) remain the same.

AUTH: 53-4-212, MCA
IMP: 53-4-211, MCA

4. The Department of Public Health and Human Services is proposing to amend ARM 37.78.102, 37.78.415, 37.78.506, and 37.78.833 pertaining to Temporary Assistance for Needy Families (TANF).

ARM 37.78.102

ARM 37.78.102 currently adopts and incorporates by reference the TANF policy manual effective July 1, 2008. The department proposes to make some revisions to this manual that will take effect on January 1, 2009. The proposed amendments to ARM 37.78.102 are necessary to incorporate into the Administrative Rules of Montana the revised versions of the policy manual and to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the TANF manual could affect approximately 7,917 TANF recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's web site at www.dphhs.mt.gov.

ARM 37.78.415

This rule has been updated to reflect a decision of the department to exclude the income that is earned by a temporary census employee. This came as a request from the United States Census Bureau.

This change will allow participants, who are employed by the Census Bureau, to remain eligible for the TANF cash assistance program while participating in very short term employment that involves an intermittent work schedule. Currently this short term employment would be counted as earned income, thus potentially affecting participants' TANF cash benefit amount or resulting in case closure due to new or increased earned income.

This change will have a positive impact on TANF cash assistance participants.

This change will apply to an average of approximately 7,917 TANF participants who are currently mandated to participate in work activities or are a member of the participant's filing unit.

ARM 37.78.506

This rule has been updated to clarify that when a sanction penalty is imposed and results in case closure, the ineligibility period is against all individuals who were considered to be a TANF recipient in the household at the time of the sanction period, individuals who were required filing unit members at the time of the sanction, or all individuals who enter the household during the ineligibility period and who would have been a required filing unit member at the time of the sanction.

This is a clarification only of current policy.

ARM 37.78.833

This rule has been updated to reflect that in order to be eligible for the TANF Cash Post-Employment Program no adult household member coded "IN" or "DQ" has received post-employment benefits in the prior 12 months. The rule was updated to clarify existing policy that states no required filing unit member has received post-employment benefits (1-3 months) in the last 12 months. The department did not intend for children to make a family ineligible if they were previously in a household that received post-employment benefits in the last 12 months.

The change will apply to an average of approximately 3,175 TANF cases currently receiving cash assistance. It is estimated that approximately 1,518 of the above mentioned households will meet eligibility criteria for this program.

Following is a brief overview of the TANF manual sections with substantive changes related to the above rule changes.

TANF 502-1 - Earned Income
TANF 502-1 is being updated to reflect that the earned income received by a temporary census employee will be excluded.

TANF 604-2 - Post-Employment Program
TANF 604-2 is being updated to reflect that no adult household member coded "IN" or "DQ" has received TANF cash assistance post-employment benefits in the prior 12 months.

5. The department intends that the amendments to ARM 37.78.415 be applied retroactively to October 1, 2008. The changes to ARM 37.78.102, 37.78.506, and 37.78.833 are proposed to be effective January 1, 2009. No detrimental effects are anticipated as a result.

6. Interested 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 Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena MT 59620-2951, no later than 5:00 p.m. on October 9, 2008. Comments may also be faxed to (406)444-9744 or e-mailed to dphhslegal@mt.gov. The department maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according

to subjects or programs of interest. To be included on such a list, please notify this same person or complete a request form at the hearing.

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

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

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

/s/ Francis X. Clinch
Rule Reviewer

/s/ Joan Miles
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State September 2, 2008.

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

In the matter of the repeal of an amended temporary emergency rule that closed the west channel of the Yellowstone River at Livingston, Montana	)))))	NOTICE OF REPEAL OF AN AMENDED TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. On June 20, 2008, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing the Yellowstone River between Carters Bridge and Highway 89 North Bridge to all recreational use of the river, published at page 1456 of the 2008 Montana Administrative Register, Issue No. 13. On July 10, 2008, the commission amended the temporary emergency rule to modify the closure to prohibit boating, floating, and swimming in the west channel of the Yellowstone River between Siebeck Island and the confluence of the east and west channels of the Yellowstone River near the Civic Center in Livingston, Montana, published at page 1584 of the 2008 Montana Administrative Register, Issue No. 14. Within the amended temporary emergency rule, the commission delegated its authority to the Department of Fish, Wildlife, and Parks (department) to determine when the closed portion of the river is again safe for boating, floating, and swimming and to rescind the amended temporary emergency closure.

2. Park County officials have informed the department that the debris that created the need for the closure of the river has been removed from the 9th Street Island Bridge. The department, in consultation with Commissioner Dan Vermillion, agrees that the closed portion of the river is again safe for public use. As this situation no longer constitutes an imminent peril to public health, safety, and welfare, the commission is repealing the rule. The repeal of the rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be removed at access points. The repeal notice will be sent to interested parties, and published in Issue No. 17 of the 2008 Montana Administrative Register.

3. The repeal of the temporary emergency rule is effective August 29, 2008, at 12:00 midnight.

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

/s/ Susan W. Daly	/s/ Robert N. Lane
Susan W. Daly	Robert N. Lane
Acting Director, Department of Fish, Wildlife and Parks	Rule Reviewer
Acting Secretary, Fish, Wildlife and Parks Commission	

Certified to the Secretary of State August 29, 2008.

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

In the matter of the repeal of a temporary emergency rule closing the Big Hole River, Silver Bow County, from Silver Bridge to Divide Bridge	))))	NOTICE OF REPEAL OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. On August 1, 2008, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing the Big Hole River from Silver Bridge to Divide Bridge, published at page 1698 of the 2008 Montana Administrative Register, Issue No. 15. There was an immediate need for a source of water for aircraft dropping water on the Pump Station Fire. This situation constituted an imminent peril to the public health, safety, and welfare of anyone recreating on the river.

2. As conditions have substantially changed and public safety is no longer an issue, the temporary emergency rule closing the Big Hole River from Silver Bridge to Divide Bridge, MAR Notice No. 12-348, is no longer necessary. As this situation no longer constitutes an imminent peril to public health, safety, and welfare, the commission is repealing the rule. The repeal of the rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be removed at access points. The repeal notice will be sent to interested parties, and published in Issue No. 17 of the 2008 Montana Administrative Register.

3. The repeal of the temporary emergency rule is effective September 2, 2008.

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

/s/ Susan W. Daly
Susan W. Daly
Acting Director
Fish, Wildlife and Parks
Acting Secretary
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State September 2, 2008.

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

In the matter of the repeal of a temporary emergency rule closing the Canyon Ferry Reservoir, Broadwater County, from the silos to the southern shore	)))))	NOTICE OF REPEAL OF A TEMPORARY EMERGENCY RULE

TO: All Concerned Persons

1. On August 19, 2008, the Fish, Wildlife and Parks Commission (commission) adopted a temporary emergency rule closing Canyon Ferry Reservoir from the silos to the southern shore, published at page 1801 of the 2008 Montana Administrative Register, Issue No. 16. There was an immediate need for a source of water for aircraft dropping water on the Bear Gulch Fire. This situation constituted an imminent peril to the public health, safety, and welfare of anyone recreating on the river.

2. As conditions have substantially changed and public safety is no longer an issue, the temporary emergency rule closing Canyon Ferry Reservoir from the silos to the southern shore, MAR Notice No. 12-349, is no longer necessary. As this situation no longer constitutes an imminent peril to public health, safety, and welfare, the commission is repealing the rule. The repeal of the rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be removed at access points. The repeal notice will be sent to interested parties, and published in Issue No. 17 of the 2008 Montana Administrative Register.

3. The repeal of the temporary emergency rule is effective September 2, 2008.

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

/s/ Susan W. Daly
Susan W. Daly
Acting Director
Fish, Wildlife and Parks
Acting Secretary
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter
Rebecca Jakes Dockter
Rule Reviewer

Certified to the Secretary of State September 2, 2008.

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

In the matter of the amendment of ARM 24.126.406 record of minutes and hearings, 24.126.501 applications, 24.126.504 exam requirements, 24.126.507 temporary permit, 24.126.510 endorsement, 24.126.701 inactive status and conversion to active status, 24.126.704 interns and preceptors, 24.126.901, 24.126.904, 24.126.907, and 24.126.910 impairment evaluators, 24.126.2101 renewals and continuing education, 24.126.2301 unprofessional conduct, adoption of NEW RULE I and NEW RULE II continuing education	) NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On June 12, 2008, the Board of Chiropractors (board) published MAR Notice No. 24-126-29 regarding the amendment and adoption of the above-stated rules, at page 1097 of the 2008 Montana Administrative Register, issue no. 11.

2. On July 10, 2008, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. No comments or testimony were received.

3. The board has amended ARM 24.126.406, 24.126.501, 24.126.504, 24.126.507, 24.126.510, 24.126.701, 24.126.704, 24.126.901, 24.126.904, 24.126.907, 24.126.910, 24.126.2101, and 24.126.2301 exactly as proposed.

4. The board has adopted NEW RULE I (24.126.2105) and NEW RULE II (24.126.2103) exactly as proposed.

BOARD OF CHIROPRACTORS
DR. THOMAS FULLERTON, PRESIDENT

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 2, 2008

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

In the matter of the amendment of ARM 36.12.1704, Permit Application - Existing Legal Demands and 36.12.1706, Permit Application Criteria - Adverse Effect	)))))	NOTICE OF AMENDMENT

To: All Concerned Persons

1. On June 26, 2008, the Department of Natural Resources and Conservation published MAR Notice No. 36-22-128 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1278 of the 2008 Montana Administrative Register, Issue No. 12. On July 31, 2008, the department published a Notice of Second Public Hearing and Extension of Comment Period on the proposed amendments at page 1534 of the 2008 Montana Administrative Register, Issue No. 14.

2. The department has amended ARM 36.12.1704 and 36.12.1706 as proposed.

3. No comments or testimony were received.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Anne Yates
ANNE YATES
Rule Reviewer

Certified to the Secretary of State September 2, 2008.

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

In the matter of the amendment of ARM 37.86.610, 37.86.705, and 37.86.2207 pertaining to Medicaid acute services reimbursement	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 17, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-446 pertaining to the proposed amendment of the above-stated rules at page 1420 of the 2008 Montana Administrative Register, Issue Number 13.

2. The department has amended ARM 37.86.2207 as proposed.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.86.610 THERAPIES, REIMBURSEMENT (1) remains as proposed.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for therapy services:

(a) For patients who are eligible for Medicaid, the lower of:

(i) the provider's usual and customary charge for the service; or

(ii) the reimbursement provided in accordance with the methodologies described in ARM 37.85.212 ~~the amount provided in the department's Montana Medicaid speech therapy fee schedule dated January 1, 2008, occupational therapy fee schedule dated January 1, 2008, and physical therapy fee schedule dated October 1, 2007, which are adopted and incorporated by reference. A copy of the department's speech, occupational, and physical fee schedules are posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the department's Montana Medicaid Speech Therapy Fee Schedule, Occupational Therapy Fee Schedule, or Physical Therapy Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951~~.

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

37.86.705 AUDIOLOGY SERVICES, REIMBURSEMENT (1) remains as proposed.

(2) Subject to the requirements of this rule, the Montana Medicaid program pays the following for audiology services:

(a) For patients who are eligible for Medicaid, the lower of:

(i) the provider's usual and customary charge for the service; or

(ii) the reimbursement provided in accordance with the methodologies described in ARM 37.85.212 ~~the amount provided in the department's Montana Medicaid Audiology fee schedule dated October 1, 2007, which is adopted and incorporated by reference. A copy of the department's audiology fee schedule is posted at the Montana Medicaid provider web site at http://medicaidprovider.hhs.mt.gov. A copy of the department's Montana Medicaid Audiology Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951~~.

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

4. The proposed amendments to ARM 37.86.610 and 37.86.705 would have substituted fee schedules for references to the reimbursement methodology in ARM 37.85.212. The department updates the fee schedules semi-annually. The department is concerned that adoption of fee schedules in the rules will require rulemaking twice each year to maintain the fees at the amounts determined using the methodology. The department has limited resources and it would not be consistent with good management practices to create additional duties. Therefore, the department is not adopting the fee schedules as proposed and will continue to follow the methodology set forth in ARM 37.85.212. This will have no effect on the amounts providers would receive for therapy services and audiology.

5. No comments or testimony were received.

6. The department intends to apply these rules retroactively to July 1, 2008. A retroactive application of the proposed rules does not result in a negative impact to any affected party.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State September 2, 2008.

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

In the matter of the amendment of ARM 37.86.2402 pertaining to preferred hospital transportation reimbursement	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 17, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-445 regarding the proposed amendment of the above-stated rule at page 1417 of the 2008 Montana Administrative Register, issue number 13. On August 14, 2008, the department published MAR Notice No. 37-449 regarding the amended notice of proposed amendment of the above-stated rule at page 1685 of the 2008 Montana Administrative Register, issue number 15.

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

3. No comments or testimony were received.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State September 2, 2008.

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

In the matter of the adoption of New Rule I, the amendment of ARM 37.86.2801, 37.86.2803, 37.86.2901, 37.86.2902, 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2943, and 37.86.2947, and the repeal of ARM 37.86.2914 pertaining to Medicaid inpatient hospital reimbursement	)	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On June 26, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-445 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1281 of the 2008 Montana Administrative Register, Issue Number 12.

2. The department has amended ARM 37.86.2803, 37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2943, and 37.86.2947; adopted New Rule I (37.86.2806); and repealed ARM 37.86.2914 as proposed.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) and (2) remain as proposed.

(3) Medicaid reimbursement shall not be made unless the provider has obtained authorization from the department or its designated review organization prior to providing any of the following services:

(a) inpatient psychiatric services provided in an acute care psychiatric hospital, acute care general hospital, or a distinct part psychiatric unit of an acute care general hospital, as required by ARM 37.88.101;

(b) through (4)(d) remain as proposed.

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

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS

(1) "Acute care psychiatric hospital" means a psychiatric facility accredited by the Joint Commission on Accreditation of Health Care Organizations that is devoted to the provision of inpatient psychiatric care for persons under the age of 21 and licensed as a hospital by:

(a) the department; or

(b) an equivalent agency in the state in which the facility is located.

(1) through (33) remain as proposed but are renumbered (2) through (34).

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

37.86.2902 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

(1) through (5) remain as proposed.

(6) Inpatient hospital providers must comply with the applicable portions of 42 CFR 482.

(7) Acute care psychiatric hospitals must comply with 42 CFR 440.160, 42 CFR 441 subpart D, and the applicable portions of 42 CFR 482.

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

37.86.2904 INPATIENT HOSPITAL SERVICES, BILLING REQUIREMENTS

(1) through (4) remain as proposed.

(5) Except for hospital resident cases, a provider may not submit a claim until the recipient has been either:

(a) remains as proposed.

(b) a patient at least 30 days, in which case the hospital may bill ~~every 31 days~~ on the 31st day and every 30 days thereafter;

(c) through (6) remain as proposed.

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

37.86.2905 INPATIENT HOSPITAL SERVICES, GENERAL REIMBURSEMENT (1) Prospective payment system (PPS) hospitals including in-state PPS facilities, distinct part units, border facilities, all out-of-state facilities, acute care psychiatric hospitals, and Center of Excellence facilities will be reimbursed under the All Patient Refined Diagnosis Related Groups (APR-DRG) prospective payment system described in ARM 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, and 37.86.2920.

(2) through (3)(f) remain as proposed.

(4) PPS facilities may interim bill for stays equal to or exceeding 30 days at the same hospital.

(a) through (6) remain as proposed.

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

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) through (b) remain as proposed.

(c) The department computes a Montana average base price per case. Effective October 1, 2008 the average base price, including capital expenses, is ~~$3,960~~ $4,129. Disproportionate share payments are not included in this price.

(i) The average base price for Center of Excellence hospitals, including capital expenses, is ~~$6,545~~ $6,890. Disproportionate share payments are not included in this price.

(ii) The average base for distinct part rehabilitation units and long term care hospitals (LTCH), including capital expenses, is ~~$8,718~~ $9,092. Disproportionate share payments are not included in this price.

(d) through (2) remain as proposed.

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

4. After publication of MAR Notice Number 37-445, the department identified two instances in which it was necessary to insert the term "acute care psychiatric hospital" to make the rules more easily understandable, but which do not constitute a substantive change in intent or meaning. Therefore, the department inserted "acute care psychiatric hospital" into the list of providers of inpatient psychiatric services in ARM 37.86.2801 and the list of prospective payment system hospitals in ARM 37.86.2905. This is intended to avoid misunderstandings about the provider status and reimbursement methodology of acute care psychiatric hospitals. For the same reasons, the department inserted a definition of "acute care psychiatric hospital" into ARM 37.86.2901. The definition is the same as "inpatient psychiatric facility" in ARM 37.88.1102 (repealed).

The department also changed the average base prices in ARM 37.86.2907 to reflect the most current data. The Montana average base price was changed from $4,128 to $4,129. The average base price for Center of Excellence hospitals and distinct part rehabilitation units was changed from $6,545 to $6,890. The average base price for long term care hospitals was changed from $8,718 to $9,092. These changes will have no detrimental effects on Medicaid providers or recipients.

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: The proposed APR-DRG system works well for adult Medicaid populations. However, it does not fairly compensate hospitals for Neonatal Intensive Care Unit (NICU) services when the infant is transferred to another hospital before

going home. Low birth weight babies who require intensive care services are often in the hospital for several months, with the most expensive portion of the care required at the beginning of the stay. Because there are only three Level III NICU units in the state, babies and their families are often required to seek treatment away from their home community. This presents financial and emotional hardships for the family. The American Academy of Pediatrics and the American College of Obstetrics in their joint publication, The Guidelines for Perinatal Care, recommend sending the infant back to their home hospital for the convalescence portion of care to allow for the local physician to become familiar with the infant, to allow the family the opportunity to learn to care for the infant's special needs, and to incorporate the infant into the family.

The proposed reimbursement policy for neonatal transfers appears to monetarily penalize the facility that provides the more acute portion of the care for a low birth weight infant and encourages it to keep the patient for the entire stay which could be detrimental to the infant and the infant's family.

We propose a return to cost reimbursement for NICU cases or a modified transfer provision for NICU cases.

RESPONSE: The department appreciates the charts and information presented by the various commentors on this subject and agrees that it is a topic that needs further analyses. The department will work with the provider association and individual hospitals affected by this policy to determine if this reimbursement policy should be changed in a future rule.

COMMENT #2: We are concerned about the accuracy of the data in the payment simulations provided to the individual hospitals and have experienced some issues with the responsiveness of the contractor hired by the department to do the simulations.

RESPONSE: The department and the contractor apologize to the hospitals that experienced a delay in response to their request for accurate simulation data. Out of approximately 14,000 claims, 27 claims involving two hospitals had grouping inaccuracies. Both facilities have been contacted and the issues resolved. The department accepted comments submitted up to one week after the date originally set for the close of comments to allow the affected hospitals time to review the accurate simulation data and submit comments.

COMMENT #3: We are concerned that the outlier policy is overly restrictive. An "outlier" is a hospital case that is atypical of the hospitalizations included in a specific DRG. Additional payments are provided for those cases to address the unusual circumstances. Outlier status is usually a statistical measure of deviation from the normal case, rather than a financial trigger.

From the data supplied by the department it appears that outlier status is rarely achieved for Montana hospital cases and that "hospitals must bear significant

exposure to losses" before outlier payments for cases that fall out of the normal range are applied.

We recommend that the department measure the appropriate outlier status as cases that represent a range of standard deviations from the mean, and compare those cases to the outlier results achieved by a financial benchmark.

RESPONSE: After analysis, the department decided to set the outlier pool (the number of cases which hit outlier) at 5% of total cases. The majority of Montana Medicaid cases are within the normal range covered by the DRG payment. The highest percentage of cases that fall out of the normal range are neonate intensive care cases. The department, therefore, set a lower outlier threshold for neonate intensive care cases acknowledging a hospital's higher level of exposure to financial losses in such cases.

COMMENT #4: We are optimistic about the proposed reimbursement changes. We thank the department for accepting many of our recommendations and for actively involving the hospitals in the rate development process.

RESPONSE: The department thanks the hospitals, medical staff, and associations for their invaluable input to these rules.

6. The department intends for the adoption, amendment, and repeal of rules to be effective October 1, 2008.

/s/ John Koch
Rule Reviewer

/s/ Joan Miles
Director, Public Health and Human Services

Certified to the Secretary of State September 2, 2008.

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

In the matter of the adoption New Rule I through XI, the amendment of ARM 37.88.206, 37.88.306, 37.88.606, 37.89.103, 37.89.106, 37.89.114, 37.89.115, 37.89.118, 37.89.119, and 37.89.131, and the repeal of 37.86.112 and 37.89.135 pertaining to the mental health services plan	)))))))))))	NOTICE OF ADOPTION, AMENDMENT, AND REPEAL

TO: All Concerned Persons

1. On July 17, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-447 pertaining to the public hearing on the proposed adoption, amendment, and repeal of the above-stated rules at page 1424 of the 2008 Montana Administrative Register, Issue Number 13.

2. The department has adopted New Rule II (37.87.303), Rule IV (37.87.1513), Rule V (37.87.1703), Rule VII (37.87.1903), Rule VIII (37.87.1915), and Rule IX (37.87.1733) as proposed. The department has amended ARM 37.88.206, 37.88.306, 37.88.606, 37.89.106, 37.89.115, 37.89.118, 37.89.119, and 37.89.131 and repealed ARM 37.89.135 as proposed.

3. The department will not be repealing ARM 37.86.112 at this time.

4. The department has adopted and amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

RULE I (37.87.102) MENTAL HEALTH SERVICES (MHS) FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE (SED), DEFINITIONS As used in this chapter, the following terms apply:

(1) through (2) remain as proposed.

~~(3) "Covered diagnosis" services are defined in ARM 37.89.103.~~

(4) and (5) remain as proposed but are renumbered (3) and (4).

~~(6) "Inpatient psychiatric services" means psychiatric care provided in a licensed hospital, psychiatric residential treatment facility, or hospital-based residential psychiatric care.~~

(5) "Licensed health care professional" means:

(a) a licensed physician;

(b) a physician assistant-certified; or

(c) an advanced practice registered nurse who is authorized to prescribe medication within the scope of the license.

(7) and (8) remain as proposed but are renumbered (6) and (7).

~~(9)~~ (8) "Mental health professional" ~~means a psychiatrist, licensed psychologist, licensed clinical social worker, or licensed professional counselor.~~ means one of the following practitioners:

(a) physician;

(b) licensed professional counselor;

(c) licensed psychologist;

(d) licensed clinical social worker; or

(e) advanced practice registered nurse, with a clinical specialty in psychiatric mental health nursing.

(10) remains as proposed but is renumbered (9).

(10) "Outpatient therapy services" means the provision of psychotherapy and related services by a licensed mental health professional acting within the scope of the professional's license.

(11) through (14) remain as proposed.

(15) "Youth" means:

(a) remains as proposed.

(b) for MHSP, a person ~~through~~ 17 years of age and younger ~~and~~ that is not eligible for Medicaid or the Children's Health Insurance Plan (CHIP) and meets the financial eligibility for MHSP.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE III (37.87.1503) MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, ELIGIBILITY (1) An individual is eligible for covered services under the MHS plan if:

(a) the individual is a youth ~~through~~ 17 years of age and younger with a serious emotional disturbance in accordance with ARM 37.87.303;

(b) through (3)(c) remain as proposed.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE VI (37.87.1723) MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, PROVIDER PARTICIPATION (1) through (2)(f) remain as proposed.

(3) A provider who is denied enrollment has no right to an administrative review or fair hearing as provided in ARM ~~37.5.304, et seq.~~ 37.5.113 and ARM Title 37, chapter 5, subchapter 3, or any other department rule.

(a) through (7) remain as proposed.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE X (37.87.2103) MENTAL HEALTH SERVICES (MHS) PLAN FOR YOUTH WITH SERIOUS EMOTIONAL DISTURBANCE, NOTICE, GRIEVANCE AND RECONSIDERATION, AND RIGHTS (1) through (2) remain as proposed.

(3) A youth has the right to any applicable grievance processes provided in ARM 37.5.318~~(5)(a)~~ regarding a denial or termination of plan eligibility.

(4) through (9) remain as proposed.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

RULE XI (37.87.2203) YOUTH SYSTEM OF CARE ACCOUNT, REQUIREMENT (1) through (4)(d) remain as proposed.

(5) The services the youth receives:

(a) shall provide for the care and protection and mental, social, and physical development of the high risk youth with multiagency service needs;

(b) must be specified in the youth's integrated treatment plan; ~~and are not~~

(c) cannot be eligible for reimbursement from another source;

~~(c)~~ (d) must be identified as part of a ~~multiagency~~ planning process;

~~(d)~~ (e) shall maintain the youth in a community setting or return the youth to a community setting as a priority; and

~~(e)~~ (f) shall be prior authorized by the department or its designee ~~place high-risk youth out-of-state as a last resort~~.

AUTH: 53-2-201, 53-6-113, 53-21-703, MCA
IMP: 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.103 MENTAL HEALTH SERVICES PLAN, DEFINITIONS As used in this subchapter, unless expressly provided otherwise, the following definitions apply:

(1) through (10) remain as proposed.

(11) "Mental health professional" means one of the following practitioners:

(a) physician;

(b) licensed professional counselor;

(c) licensed psychologist;

(d) licensed clinical social worker; or

(e) advanced practice registered nurse, with a clinical specialty in psychiatric mental health nursing.

(11) through (17) remain as proposed but are renumbered (12) through (18).

AUTH: 41-3-1103, 52-1-103, 53-2-201, 53-6-113, 53-6-131, 53-6-701, 53-21-703, MCA
IMP: 41-3-1103, 52-1-103, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-117, 53-6-131, 53-6-701, 53-6-705, 53-21-139, 53-21-201, 53-21-202, 53-21-701, 53-21-702, MCA

37.89.114 MENTAL HEALTH SERVICES PLAN, COVERED SERVICES

(1) Authorized medically necessary mental health services for a covered diagnosis are covered under the plan for members, except as provided in this subchapter include:

(a) evaluation and assessment of psychiatric conditions by licensed and enrolled mental health professionals as defined in ARM 37.89.103 ~~37.106.1902 or licensed and enrolled health care professionals as defined in ARM 37.106.1902~~;

(b) through (10)(a)(ii) remain as proposed.

AUTH: 41-3-1103, 52-1-103, 52-2-603, 53-2-201, 53-6-113, 53-6-131, 53-6-706, 53-21-703, MCA
IMP: 41-3-1103, 52-1-103, 52-2-603, 53-1-405, 53-1-601, 53-1-602, 53-1-603, 53-2-201, 53-6-101, 53-6-113, 53-6-116, 53-6-701, 53-6-705, 53-6-706, 53-21-139, 53-21-202, 53-21-701, 53-21-702, MCA

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

COMMENT #1: We are concerned about the definition for Mental Health Service Plan (MHSP) for youth as a person through 17 years and not eligible for Medicaid or CHIP. We oppose any language that reduces the age of eligibility.

RESPONSE #1: Mental Health Service Plan (MHSP) for individuals age 18 and older are covered under the adult MHSP program. Under the current program, most 18 year olds are receiving services under the adult MHSP program. For calendar year 2008 to date, there were two applications for MHSP processed through the CHIP program. Both individuals met clinical eligibility criteria under the adult MHSP program. For recipients and providers, it was confusing to have 18 year olds included in both the youth and adult MHSP programs. The proposed rule clarifies that individuals age 18 and older are covered by the adult MHSP program.

COMMENT #2: I suggest the department add an "advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing" under the definition of "mental health professional" in New Rule I Mental Health for Youth with Serious Emotional Disturbance (SED), Definitions.

RESPONSE #2: The department agrees and has added this language to the definition of "mental health professional". To provide additional clarity, the department also added two definitions:

(5) "Licensed health care professional" means:

(a) a licensed physician;

(b) a physician assistant-certified; or

(c) an advanced practice registered nurse who is authorized to prescribe medication within the scope of the license.

(10) "Outpatient therapy services" means the provision of psychotherapy and related services by a licensed mental health professional acting within the scope of the professional's license.

COMMENT #3: We applaud the efforts of the department to reorganize the rules pertaining to mental health for youth into one chapter. It will be helpful in providing clarity and navigation of the regulations.

RESPONSE #3: The department thanks the commentor.

6. In the Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal of these new rules and amendments, the department inaccurately stated that the bill sponsor requirements of 2-4-302, MCA did not apply. In fact, Rule XI (37.87.2203), "Youth System of Care Account", is a rule that initially implements legislation. Therefore, the bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by regular U.S. mail on May 12, 2008.

/s/ John Koch
Rule Reviewer

/s/ John Chappuis for
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State September 2, 2008.

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

In the matter of the adoption of New Rules I through XIII and the amendment of ARM 37.106.1946 pertaining to crisis stabilization facilities	)))))	NOTICE OF ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On May 8, 2008, the Department of Public Health and Human Services published MAR Notice No. 37-441 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 905 of the 2008 Montana Administrative Register, issue number 9.

2. The department has adopted New Rule II (37.106.2026), Rule IV (37.106.2038), Rule VII (37.106.2032), Rule VIII (37.106.2033), Rule X (37.106.2042), Rule XI (37.106.2046), Rule XII (37.106.2047), and Rule XIII (37.106.2048) as proposed. The department has amended ARM 37.106.1946 as proposed.

3. The department has adopted the following rules as proposed with the following changes from the original proposal. Matter to be added is underlined. Matter to be deleted is interlined.

RULE I (37.106.2025) APPLICATION OF OTHER RULES (1) In addition to the requirements established in this subchapter, each mental health center providing a secured in-patient crisis stabilization program shall comply with all the requirements established in ARM 37.106.1945 and 37.106.1946 with the exclusion of ARM 37.106.1946(3)(j).

(2) remains as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE III (37.106.2027) DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) "Crisis plan" means an initial, brief, individualized plan that:

(a) lists client problems identified by the secured crisis stabilization facility's mental health crisis assessment;

(b) lists the individual's strengths and resources;

(c) addresses cultural considerations;

(d) identifies support network options; and

(e) identifies referral and transition activities that will occur at discharge.

~~(1)~~ (2) "In-patient crisis stabilization program" means 24-hour supervised treatment for adults with a mental illness for the purpose of reducing the severity of an individual's mental illness symptoms.

~~(2)~~ (3) "Secured crisis stabilization facility (SCSF)" means a secure in-patient facility operated by a licensed hospital, critical access hospital, or a licensed mental health center that provides evaluation, intervention, and referral for individuals experiencing a crisis due to serious mental illness or a serious mental illness with a co-occurring substance use disorder. The facility may only provide secured services to a client when a detention exists as defined in 53-21-129, MCA.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE V (37.106.2039) DISCHARGE PROCEDURES (1) through (1)(d) remain as proposed.

(2) The facility must ensure in-patient care is available through a critical access hospital or hospital transfer agreement for clients in need of an acute level of medical treatment.

AUTH: 50-5-103, MCA
IMP: 50-5-201, 50-5-202, MCA

RULE VI (37.106.2031) CONSTRUCTION REQUIREMENTS (1) through (3)(d) remain as proposed.

(4) The SCSF will provide access to a nourishment station or kitchen as required in the 2001 Edition of the Guidelines for the Design and Construction of Hospitals and Health Care Facilities, Section 8.2.C9, For Serving Nourishments Between Meals. A copy of this publication can be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena MT 59620-2953.

(5) through (6) remain as proposed.

(7) Patient rooms will be at a ratio of ~~100~~ 80 square feet for single bedrooms. The room square footage does not include bathrooms, door swings, alcoves, or vestibules. No more than one patient shall reside in a single room in a secured unit.

AUTH: 50-5-103, MCA
IMP: 50-5-201, MCA

RULE IX (37.106.2034) SECLUSION AND RESTRAINT (1) A SCSF must be capable of providing restraint or seclusion and must ensure that the restraint or seclusion is performed in compliance with 42 CFR 482.13(f)(1) through ~~(6)~~ (7). The department adopts and incorporates by reference 42 CFR 482.13(f)(1) through ~~(6)~~ (7) (July 2, 1999), which contains standards for use of seclusion and restraint for behavioral management.

(2) through (5) remain as proposed.

(6) A physician or other authorized health care provider must authorize use of the restraint or seclusion within one hour of initiating the restraint or seclusion. Each original order and renewal order is limited to four hours.

(7) Each order of restraint or seclusion is limited in length of time to a total of 24 hours.

(8) remains as proposed.

AUTH: 50-5-103, MCA
IMP: 50-5-103, MCA

4. The department has thoroughly considered the comments received. The comments received and the department's response to each follow:

COMMENT #1: One comment received requested that the department articulate the significant clinical differences for patients stabilized in the hospital emergency room, in-patient unit, or at the Montana State Hospital from those patients who might be referred to a crisis stabilization facility. This would help illuminate the likely purpose and use for the facilities and provide guidance for admission policies adopted by the facility.

RESPONSE: All facilities mentioned could serve the same patient unless the patient is acutely ill or medically unstable. Individuals who are subject to placement in a secure crisis stabilization facility have been assessed by a mental health professional that has rendered a determination that the person is a danger to self or to other persons because of a mental disorder. A licensed mental health professional (LMHP) can place a 24-hour hold or until the next working day, on a patient in any of the settings mentioned. The LMHP hold determination can be made in the Emergency Department (ED) and either admit the patient or initiate a transfer to a Secured Crisis Stabilization Facility (SCSF) or to another mental health facility. Where the ED would not be able to hold the patient beyond 24 hours, a SCSF can hold the patient for stabilization until commitment proceedings are completed. A decision regarding the appropriate placement of the individual in a hospital emergency room, in-patient unit, or at the Montana State Hospital would be based upon the clinical needs of the individual and requirements for safety, as well as an assessment of the available resources in the community. The department cannot articulate clinical differences for placement through administrative rules, when the community-based professionals are mandated by 53-21-129, MCA, to render a determination based on a combination of clinical standards, personal safety, and local and regional resources.

COMMENT #2: The same commentor included a concern that hospital emergency rooms might be accused of violating the stabilization and transfer requirements of federal EMTALA standards if the hospital medical staff transfers a patient to a SCSF.

The commentor asks, that the department provide guidance on its interpretation of the approved clinical condition under which the hospital can safely transfer a patient to a SCSF.

RESPONSE: The patient could be transferred to a SCFS if they did not require acute medical services and were medically stable, but experiencing a mental health crisis as determined by a LMHP or a physician that has rendered a determination that the person is a danger to self or to other persons because of a mental disorder. A decision regarding the appropriate placement of the individual from a hospital emergency room to a SCSF must be based upon the clinical needs of the individual and requirements for safety, as well as the available resources in the community. The department cannot articulate clinical differences for placement through administrative rules, when the ED based professionals are mandated by 53-21-129, MCA to render the determination on each patient's individual needs assessment which should be based on a combination of clinical standards, best practice, personal safety, and the local and regional resources.

COMMENT #3: A commentor expressed that facilities had concerns about available workforce, and adequate access to psychiatric and middle level professional treatment, access to labs, medications, et cetera, as needed for medical case management. These services were not described in detail in the rules and commentor would like to see those covered in detail.

RESPONSE: These rules are the minimum standards required for the daily operation of a SCSF facility. These rules do not address workforce shortages, or lacking access to professional treatment. The availability of workforce to staff a facility and a patient's lack of access to psychiatric and mid-level professional treatment are relevant to this rule only to the extent of the SCSF staffing requirements found within these rules.

COMMENT #4: Are there any on-call requirements required of local providers to the facility and how would that be outlined? Are there any other parameters or requirements around that?

RESPONSE: There are no on-call requirements in Rule X (ARM 37.106.2042). The rules provide the minimum requirements to operate and staff a licensed SCSF. Each facility shall develop appropriate policy and procedures regarding the provision of minimum licensing requirements of staffing levels, to meet both the patient and facility needs. The department would encourage cooperative relationships between local providers. However, whatever the relation, it will be as each see fit and not mandated by rule.

COMMENT #5: Page 911 of the published Rule Notice is unclear to the commentor. Does the notice propose the application of ARM 37.106.1946, Mental Health Center: In-patient Crisis Stabilization Program, requirements to the development of a secured in-patient crisis facility? If so, commentor is concerned about admission criteria. The commentor agrees that the secured in-patient crisis facility needs to

develop admission criteria, however, the minimum requirements for that criteria need to be different from that required for a mental health center in-patient crisis stabilization program that is not secure.

RESPONSE: Yes, the rule proposes the application of an in-patient crisis stabilization program (ICSP) to the SCSF. The department agrees the secured in-patient crisis facility shall develop admission criteria. The department also agrees the minimum requirements for that criteria need to be different from that required for a mental health center ICSP that is a voluntary service and is not secure. The department will place an exemption in the rule to exclude ARM 37.106.1946(3)(j) "establish admission criteria" found in ARM 37.106.1946.

COMMENT #6: One commentor remarked about ARM 37.106.1946(4) regarding training on therapeutic de-escalation of crisis situations should be done on hire/orientation to the position and thereafter updated per program policy but no less than biannually.

RESPONSE: The rule is written in a broader context than what the commentor would like to see. This has been done for a reason. By having the broader more general language, the provider is able to determine the plan of training for therapeutic de-escalation based upon their particular program and staffing needs. Should the provider choose to implement this training on hire/orientation, the rule does not prohibit this. The commentor would also like to see the rule address that the training be updated biannually; again, the rule doesn't preclude this, but requires the update to occur at least annually. Should the provider choose to update this training more frequently, the provider may do so by developing, and implementing new policy and procedures.

COMMENT #7: Commentor offered that more than any other service offered by mental health centers, this facility/program has a higher liability risk and provides a service otherwise provided principally by the state hospital. Providing the same level of indemnification available to the state when they provide this level of care is worth consideration as well. Indemnification may require a change in statute which is beyond the scope of these rules but should be considered separately by DPHHS.

RESPONSE: The department agrees that this comment is beyond the scope of the proposed rules and is not currently planning to pursue indemnification legislation.

COMMENT #8: The commentor is also in the situation of requiring placement in a secure setting under the mental health emergency detention provisions of 53-21-129, MCA, as a public safety precaution measure for either the individual and rarely for others who may be threatened with harm. The commentor strongly encourages the adoption of the provisions contained in these proposed rules which would permit the creation of a secure/in-patient program and facility which is both staffed and licensed to provide short term evaluation/stabilization to an individual in a crisis situation. Currently, the alternative most available for this type of situation is placement at Montana State Hospital. The commentor firmly believes that having

the alternative of using a community-based facility, rather than the state hospital, will result in less costly, less disruptive, and better access to treatment for the individual.

RESPONSE: The department thanks the commentor for their words of support for the implementation of these rules.

COMMENT #9: A commentor had questions regarding the proposed rules and their connection to the 72-hour presumptive eligibility program as well as the role of telepsychiatry in a facility of this nature. Would this be a part of the development of the procedures and processes that connect with the Montana State Hospital and other in-patient psychiatric facilities and is there any infrastructure possibilities for the development of the telepsychiatry concept?

RESPONSE: The 72-hour presumptive eligibility program is only available to a patient for a voluntary crisis stabilization stay as per 53-21-132, MCA. A patient stay in a SCSF does not qualify for the 72-hour presumptive eligibility program as the patient is involuntarily detained prior to a commitment.

Nothing in the rule would preclude the use, as appropriate, of telepsychiatry or the development of intra-connections with other psychiatric in-patient facilities or the MSH. The department is unaware of any developed infrastructure or infrastructure developing possibilities.

COMMENT #10: Commentor doesn't think that it is really clear if this is just a 72-hour facility or just 72 hours that a person is on an emergency hold.

RESPONSE: The department thinks the answer can be either. In either case, the secured portion of the SCSF is limited to the statutory timelines for involuntary commitment which is found at 53-21-129, MCA, and is limited to approximately 72 hours. If the commitment process is not concluded the patient can leave, be referred to an outpatient program, or where provided, voluntarily enter the facility's unsecured in-patient crisis program for whatever length of time is appropriate.

New Rule I (ARM 37.106.2025) Application of Other Rules

COMMENT #11: The department should clarify under the rule that a program of service provided by a crisis intervention facility operated by a community mental health center is not the same as a crisis intervention program offered by a community mental health center. This clarification should delineate the clinical differences in the services offered under each model.

RESPONSE: A crisis intervention facility and a crisis intervention program offered by a mental health center are the same. The crisis program and services referenced by the commentor are licensed under the authority of Title 50, MCA, Health Care Facility Licensing, as an endorsement under a mental health center facility license. All licensed services for crisis stabilization are under the mental health center facility licensed by endorsement and follow a logical continuum in the following manner:

(1) crisis telephone services are a required core service for any mental health center;

(2) an in-patient crisis stabilization program is a voluntary in-patient crisis response facility;

(3) a 24-hour outpatient crisis stabilization is for short term intervention assessment and referral; and

(4) the proposed secured stabilization facility is only for persons involuntarily held for stabilization by a LMHP.

Each of these programs is considered to be a crisis intervention "program" under a licensed mental health center by endorsement.

COMMENT #12: The commentor notes that 53-21-139, MCA, Crisis intervention programs provides:

"(1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of persons suffering from a mental disorder and requiring commitment in a temporary, safe environment in the community as an alternative to placement in jail.

...

(3) The department may provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(4)(j); and

(b) a targeted case management service authorized in 53-6-101(4)(n)."

It appears that a crisis stabilization facility is intended to provide services described above. That is, 24-hour emergency admission, requiring commitment and an alternative to placement in jail. But, the rules provide services beyond the scope of programs listed later in the statute.

RESPONSE: The licensing rules for a Mental Health Center providing crisis services are authorized under Title 50, chapter 5, parts 1 and 2, MCA, not under Title 53, MCA. The department agrees there is similarity between the two statutes. However, these rules are not written to enable Title 53, MCA, but to provide minimum standards for a Secured Crisis Stabilization Facility licensed under Title 50, chapter 5, part 2, MCA, the health care facility statutes.

New Rule III (ARM 37.106.2027) Definitions

COMMENT #13: One commentor noted above, at Rule III(2) (ARM 37.106.2027(2)) the department proposes to define a SCSF to be nearly identical to the conditions raised in 53-21-139, MCA.

RESPONSE: The department agrees with the comment and refers to the answer provided in the response to Comment #12.

COMMENT #14: Under New Rule III(2) (ARM 37.106.2027), Commentor asks if their understanding of the definition is correct that it means:

(a) The facility may provide care to clients who agree to treatment on a voluntary basis. Discharge and/or transfer arrangements must be made within 72 hours.

(b) The facility may also provide secured treatment to those clients that are being detained in 53-21-129, MCA. If the length of stay for the detention as defined in 53-21-129, MCA, exceeds 72 hours the client will be transferred by the county to the state hospital or other agreeable acute in-patient hospital.

RESPONSE: The commentor is incorrect. A SCSF may only provide secured services to a client when a detention exists as defined in 53-21-129, MCA. Clients who agree to treatment on a voluntary basis may be admitted to an in-patient crisis stabilization program defined in ARM 37.106.1946.

COMMENT #15: One person offered the following additional language for New Rule III(2) (ARM 37.106.2027). The facility may also provide secured treatment to those clients that are being detained as defined in 53-21-129, MCA. If the length of stay for the detention as defined in 53-21-129, MCA, exceeds 72 hours the client will be transferred by the county to the state hospital or other agreeable acute in-patient hospital.

RESPONSE: Disposition of the client at the end of the detention is defined in New Rule V (ARM 37.106.2039), therefore the department declines to add additional language to New Rule III(2) (ARM 37.106.2027) because it is unnecessary and redundant.

New Rule IV (ARM 37.106.2038) Admissions Procedure

COMMENT #16: One comment recommends that the department include at least some minimum criteria for patient admission in order to clarify clinical patient needs and standards.

RESPONSE: The department agrees, but feels 53-21-129(2), MCA, adequately covers this comment as follows: "If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day...". The department cannot articulate clinical differences for placement through administrative rules, when the community-based professionals are mandated by 53-21-129, MCA to render a determination based on a combination of clinical standards, personal safety, and local and regional resources.

Additionally, each facility must develop and implement policy and procedures that govern their daily operation which would include admission and discharge criteria.

The policies and procedures would be unique to each facility to allow full consideration of all local, regional, or state resources.

New Rule V (ARM 37.106.2039) Discharge Procedures

COMMENT #17: One commentor remains concerned that the rule provides for "transfer to an appropriate level of acute in-patient treatment". The commentor suggests that the department require the patient needing additional stabilizing care in excess of the time or medical capacity provided by the facility to be transferred directly to the Montana State Hospital. Alternatively, the rules could require the facility to hold a transfer arrangement with hospitals that provide in-patient psychiatric care and the Montana State Hospital. SCSFs are not subject to federal EMTALA standards and can affect appropriate transfers directly to MSH, thereby avoiding costly services of the hospital emergency room.

RESPONSE: The department feels that the rule does what the commentor is requesting. SCSFs cannot provide acute in-patient treatment. Any patient transfer from a SCSF must be determined by individual patient need. If a patient is not medically stable and needs to be seen in a medical environment, a transfer to a hospital would be appropriate. Any patient who is committed will be transferred to the state hospital. If there is no commitment made the patient is discharged from the SCSF and is free to go. Without a medical need or commitment there would be no transfer affected. However, the patient may be referred to a mental health center nonsecured in-patient crisis program, outpatient services, the state hospital, or to a hospital that provides in-patient psychiatric care based on bed availability and other community resources.

New Rule VI (ARM 37.106.2031) Construction Requirements

COMMENT #18: A commentor suggested that as long as a nourishment station as defined or other kitchen facility is located within the building and able to provide ice as needed to clients within the SCSF that this is reasonable and there is no need to have a nourishment station specifically located within the secure unit itself.

RESPONSE: The department agrees, but would point out that patient access to ice is not the only service provided by a nourishment station. Nourishment stations shall meet the requirements found in the 2001 edition of the AIA "Guidelines for Design and Construction of Hospitals and Healthcare Facilities". The department will amend the proposed rule to reflect "access to nourishment station or kitchen...".

COMMENT #19: Two comments were received suggesting that 80 square feet per patient bedroom is a reasonable size. One commented this is the standard used in all our new construction for residential crisis stabilization facilities for the past 15 years throughout the 15 county region and we have not received any complaints nor encountered any problems with this.

RESPONSE: The department agrees and will amend New Rule VI(7) (ARM 37.106.2031) to allow 80 square feet per bedroom of free and unobstructed space not inclusive of door swings, wardrobes, alcoves, or other nonuseable square footage.

New Rule VII (ARM 37.106.2032) Patient Toilets and Bathing

COMMENT #20: SCSFs will typically have fewer than five beds. One commentor thought it may be reasonable to require two toilets and bathing units for facilities up to five beds merely to allow reasonable and timely access, and gender separation and privacy.

RESPONSE: The department feels one water closet toilet and one bathing space is adequate for five people. The 2001 edition of the AIA "Guidelines for Design and Construction of Hospitals and Healthcare Facilities" require one toilet per six residents and one bathing unit for every 12 residents. The department does not wish to needlessly add to the cost of developing a SCSF. New Rule VII (ARM 37.106.2032) contains the minimum standards. It is discretionary for a SCSF to have additional toilets and bathing spaces. The department will not amend the rule to increase the minimum standards.

New Rule IX (ARM 37.106.2034) Seclusion and Restraint

COMMENT #21: The department is incorporating by reference hospital conditions of participation that are nearly ten years out-of-date. The commentor recommends that the department incorporate the latest version of the federal standard, including Parts e and f. Part e provides the most current practice on application and use of seclusion and restraints, while Part f provides for staff training and demonstration of competency.

RESPONSE: The department agrees the hospital "Conditions of Participation" (COP) are ten years outdated. The department agrees with the comment and will amend ARM 37.106.401(1) - Minimum Requirements for a Hospital, to incorporate the latest federal standard including Parts e and f as the state licensing requirements for a hospital. This will be taken care of in another notice that the department is currently working on for publication in the near future.

COMMENT #22: CMS Interim Rule adopted in 1999 has been replaced by the Final Rule effective 1/8/07 with interpretive guidelines to be issued in 2008.

RESPONSE: The department understands the commentor's concern. However, mental health centers and the various possible endorsements to a mental health center license, including a SCSF as proposed by this rule, do not qualify as a CMS "certified facility". Therefore, there is no need to incorporate or refer to CMS rules or guidelines.

COMMENT #23: Restraint and seclusion capacity in these facilities would require immediate access to qualified medical professionals to meet regulatory procedures surrounding this process and the ability to "one-to-one" a patient who was restrained or secluded under these procedures. The risks and dangers surrounding these procedures could possibly preclude an agency from referring a patient to a facility. There needs to be a real sense of safety (in the rules) for a medical professional to refer a patient to a facility that has the capacity of restraint and seclusion.

RESPONSE: The department agrees restraint or seclusion capacity in a SCSF requires immediate access to qualified medical professionals to meet regulatory procedures surrounding any restraint or seclusion which may be required for stabilization or de-escalation. As to the comment regarding a "real sense of safety for a medical professional" to refer the minimum requirements for the operation of a SCSF are established by these rules and are available for scrutiny by anyone. A review of any SCSF's policy and procedure manual, staffing availability (and staffing patterns), review of any transfer agreements or Memorandums of Understanding, understanding local and regional resources and finally an evaluation of the process and the ability for a SCSF to "one-to-one" a patient who was restrained or secluded; should give any professional a sense of the mental health center or SCSF competencies.

COMMENT #24: One comment was received regarding time limits in Rule IX(7) (ARM 37.106.2034). Time limits apply when restraint or seclusion are used for the management of violent or self-destructive behavior that jeopardizes the immediate physical safety of the patient, staff members, or both. Orders indicate the time limitations and the time limit is included in the plan of care. Each original order and renewal order is limited in the plan of care. Each original order and renewal order is limited to four hours for adults; two hours for ages nine through 17, and one hour under age nine. Original orders may only be renewed by a physician or licensed independent practioner (LIP) in accordance with these limits for up to a total of 24 hours. Each renewal order must be renewed as authorized by facility policy. However, after 24 hours, if the patient is still under restraint or seclusion, the patient must be seen and assessed by a physician or LIP before a new order is written.

RESPONSE: The department agrees and will clarify the language of the rule to indicate that original orders for restraint and seclusion are limited to four hours; however the orders can be renewed by a physician or LIP for time limits not to exceed 24 hours. The SCSF will not be serving persons under the age of 18, therefore the references to time limits for persons aged nine through 17 and less than nine years of age as indicated by the comment will not be reflected in this rule.

New Rule XII (ARM 37.106.2047) Client Discharge

COMMENT #25: One commentor offered the following language modification to New Rule XII (ARM 37.106.2047) for consideration.

(1)(b) a summary of the services provided by the SCSF including recommendations for aftercare services and referrals to other services, as well as any other care coordination activities.

(e) the staff of the facility will prepare a crisis plan with the client.

RESPONSE: The department agrees with the comment and has added the suggested language and the following definition of "crisis plan" to New Rule III (ARM 37.106.2027), the definition rule.

"Crisis plan" means an initial, brief, individualized plan that:

(a) lists client problems identified by the secured crisis stabilization facility's mental health crisis assessment;

(b) lists the individual's strengths and resources;

(c) addresses cultural considerations;

(d) identifies support network options; and

(e) identifies referral and transition activities that will occur at discharge.

New Rule XIII (ARM 37.106.2048) Emergency Procedures

COMMENT #26: One commentor remains concerned that the SCSF might provide limited stabilization care, but transfer difficult patients, or those whose detention time expires to the local hospital emergency departments. The department should require SCSF to hold transfer arrangements for medical emergencies with community hospitals, but hold transfers for mental health conditions with hospitals that provide mental health services. This requirement will reduce, if not eliminate, wasteful use of emergency rooms and provide more efficient and appropriate mental health care to meet patient needs.

RESPONSE: The department partially concurs with this comment. A patient's detention time expiring is not a basis for continued secured stabilization. If the patient is not committed by court order then there is no transfer necessary as the patient can just leave. However for medically unstable patients, New Rule V (ARM 37.106.2039) will include (2), which will state:

"The facility must ensure in-patient care is available through a critical access hospital or hospital transfer agreement for clients in need of an acute level of medical treatment."

COMMENT #27: There needs to be a further clarification that if a patient is in a crisis stabilization facility that has an emergency situation occur(s) that there are agreements with the local emergency department(s) to be able to make a transfer and that it is an organized process that is recognized and understood by both facilities. Commentor handles such things through written agreements. Clarity around that would create a comfort level for providers involved in the process.

RESPONSE: Please see Response #26. The department will not amend the rule to require written transfer agreements between providers except as indicated in the

response above. However, the department does encourage an open dialogue and the development of agreements between all various providers in a given community. If a patient is experiencing a medical emergency, the transfer to an ED would be the only appropriate option to the SCSF. If the patient is in a mental health crisis that is beyond the SCSF's capability, the patient can only be referred to the state hospital or other acute care mental health facility with an in-patient psychiatric service/unit and an open bed.

/s/ Lisa H. Swanson
Rule Reviewer

/s/ Joan Miles
Joan Miles, Director
Public Health and Human Services

Certified to the Secretary of State September 2, 2008

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 42.18.107, 42.18.110, 42.18.113, 42.18.122, and 42.18.124 relating to Montana's Property Appraisal Plan	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On July 31, 2008, the department published MAR Notice No. 42-2-796 regarding the proposed amendment of the above-stated rules at page 1555 of the 2008 Montana Administrative Register, issue no. 14.

2. A public hearing was held on August 21, 2008, to consider the proposed amendments. The department proposed additional amendments at the hearing. However, after further review the department has decided not to proceed with those amendments at this time. If circumstances change in the future where the department is required to consider other statistical data concerning the appraisal date, the department will proceed with a new rulemaking action at that time.

3. No oral comments were received during the hearing. Written comments were received and are summarized as follows along with the response of the department:

COMMENT NO. 1: Mr. Mike Green, Attorney at Law, Helena, stated the date amendment shown in ARM 42.18.124 was incorrect and the amendment to the rule should change the second "January" rather than the first to "July."

RESPONSE NO. 1: The department concurs with Mr. Green's statement and has amended the rule as shown below to correct this error.

COMMENT NO. 2: Ms. Mary Whittinghill, Executive Director, Montana Taxpayers' Association, Helena, stated that she believes a further amendment is necessary in ARM 42.18.110(1)(d) with regard to the reference of the location of the CALP definition. She stated that the definition is now located in ARM 42.18.128. She stated that ARM 42.18.107(3) should have also been amended with these rules to reflect the correct location of the PVAS definition, which was also moved to ARM 42.18.128.

RESPONSE NO. 2: The department concurs with Ms. Whittinghill's comments and has amended the rules as shown below to reflect her suggestions.

4. As a result of the comments received the department amends ARM 42.18.107, 42.18.110, and 42.18.124 with the following changes, stricken matter interlined, new matter underlined:

42.18.107 2009 MONTANA REAPPRAISAL PLAN (1) through (2)(d) remain the same.

(3) PVAS, as defined in ARM ~~42.2.304~~ 42.18.128, is used to assist in the valuation process. The department determines a new appraised value for each:

(a) through (5) remain the same.

AUTH: 15-1-201, MCA
IMP: 15-7-111, 15-7-133, MCA

42.18.110 2009 RESIDENTIAL REAPPRAISAL PLAN (1) The reappraisal of residential property consists of:

(a) through (c) remain as proposed.

(d) development and review of CALP models, as CALP is defined in ARM ~~42.2.304~~ 42.18.128;

(e) through (13) remain as proposed.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-7-111, MCA

42.18.124 CLARIFICATION OF VALUATION PERIODS (1) and (1)(a) remain as proposed.

(b) For the taxable years from ~~July~~ January 1, 2009, through December 31, 2014, all property classified in 15-6-134, MCA, (class four) must be appraised at its market value as of ~~January~~ July 1, 2008.

AUTH: 15-1-201, 15-7-111, MCA
IMP: 15-6-134, 15-7-103, 15-7-111, MCA

5. Therefore, the department amends ARM 42.18.107, 42.18.110, and 42.18.124 with the amendments listed above and amends ARM 42.18.113 and 42.18.122 as proposed.

6. An electronic copy of this Adoption Notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Adoption 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.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State September 2, 2008

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.10.335 and 44.10.336, and the adoption of New Rules I through IX, all related to constituent services accounts	))))	NOTICE OF AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 13, 2008, the office of the Commissioner of Political Practices (commissioner) published MAR Notice No. 44-2-143, regarding the notice of public hearing on proposed amendment and adoption of the above-stated rules at page 474 of the 2008 Montana Administrative Register, Issue No. 5; and on June 12, 2008, published MAR Notice No. 44-2-147 regarding the amended notice of public hearing on proposed amendment and adoption at page 1130 of the 2008 Montana Administrative Register, Issue No. 11.

2. After consideration of the comments received, the commissioner has amended ARM 44.10.335 and ARM 44.10.336 exactly as proposed.

3. The commissioner has adopted New Rule I (ARM 44.10.536), New Rule II (ARM 44.10.537), New Rule III (ARM 44.10.538), New Rule IV (ARM 44.10.539), New Rule VI (ARM 44.10.541), New Rule VIII (ARM 44.10.543), and New Rule IX (ARM 44.10.544), exactly as proposed.

4. The commissioner has adopted the following rules as proposed but with changes from the original proposal, matter to be stricken interlined, new matter underlined:

NEW RULE V (44.10.540) AUTHORIZED EXPENDITURES (1) through (1)(f) remain as proposed.

(g) expenses related to education, workshops, and conference participation that are incurred to represent and serve constituents;

(g) remains as proposed, but is renumbered (h).

(2) through (6) remain as proposed.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

NEW RULE VII (44.10.542) RECORDS AND REPORTING (1) An eligible elected official who establishes a constituent services account under Title 13, chapter 37, part 4, MCA, 13-37-240, MCA, and the rules in this chapter, must file quarterly reports with the commissioner's office after an account is opened. Reports must be filed on or before ~~March 15, June 15, September 15, and December 15~~ April 10, July 10, October 10, and January 10 in each calendar year until the account is closed as provided in ~~[NEW RULE IX]~~ ARM 44.10.544. A report must be filed

even if no expenditures have been made during the reporting period. The reports must include all expenditures made and interest accrued ~~within ten days of the date~~ through the end of the calendar quarter on which the quarterly report is due.

(2) through (4)(a) remain as proposed.

(b) A written log or other documents identifying the date on which constituent services were provided, the street address~~,~~ and city~~, and county~~ at which the constituent services were provided, a statement describing the constituent services provided, and the full name and mailing address of at least one constituent on whose behalf the constituent services were provided.

(c) through (6) remain as proposed.

AUTH: 13-37-114, MCA
IMP: 13-37-401, 13-37-402, MCA

5. The commissioner has thoroughly considered the comments and testimony received. A summary of the comments received and the responses to the comments follow:

Comment 1: The statement of reasonable necessity is inadequate.

Response 1: The commissioner disagrees. The commissioner believes the reasonable necessity statement published on March 13, 2008, in support of the proposed amendments and adoptions adequately identifies the necessity and rationale for each of the proposed new rules or rule changes. Nevertheless, on June 12, 2008 the Commissioner of Political Practices published an amended notice providing a more detailed statement of reasonable necessity.

Comment 2: There is no basis for expanding or changing the existing definition of "immediate family" in ARM 44.10.335. The existing ban on returning surplus campaign funds to contributors would prohibit a successful candidate from returning a contribution to a first cousin or a spouse's grandparent.

Response 2: The existing definition of the term "immediate family" was based on a statutory definition of the term in the financial disclosure law applicable to elected officials. That definition has since been repealed. The amended definition in ARM 44.10.335 is based on Montana's nepotism statute, 2-2-303(1), MCA. The commissioner believes the amended definition is consistent with the expansive language in 13-37-240(2), MCA, which prohibits a candidate from using surplus campaign funds in a way that will provide a direct or indirect benefit of any kind to the candidate or any member of the candidate's immediate family.

Comment 3: New Rule II(3) appears to be an advisory or interpretive rule and is essentially meaningless.

Response 3: The commissioner disagrees. The commissioner believes it is important to direct the attention of those who create constituent services accounts to other provisions of Montana law that may also apply to the receipt or use of funds by

a candidate or elected official. In addition, any candidates or elected officials who are not eligible to create constituent services accounts, but who may create or hold other accounts, should be aware of the restrictions in the Montana Code of Ethics and in the other cited statutes, which may apply to their activities or proposed activities.

Comment 4: In New Rule V, there is no basis for limiting reimbursement amounts to state rates.

Response 4: The commissioner believes it is appropriate to provide that reimbursement for travel, meals, and lodging expenses incurred to provide constituent services shall be at the rate and reimbursement levels applicable to elected officials as provided in Title 2, chapter 18, part 5, MCA, because the statutory definition of "constituent services" clearly indicates that those services are intended to relate to an eligible elected official's public duties.

Comment 5: The prohibition in New Rule V(6)(c) on the use of constituent services account funds to pay for the cost of polls or public opinion surveys is arbitrary and has no statutory basis.

Response 5: The commissioner disagrees. The commissioner believes that public opinion surveys and polls primarily benefit the elected official, not the official's constituents, and that permitting constituent services account funds to be used to pay for these activities is therefore inconsistent with the directive in 13-37-401 and 13-37-402, MCA, that such funds only be used for constituent services ("to represent and serve constituents").

Comment 6: A comment questions why there is a definition of the term "in-kind donation" in New Rule I, when the statute deals with constituent services accounts and surplus campaign funds.

Response 6: The definition is included because of the absolute prohibition against using any funds other than surplus campaign funds to pay for constituent services provided by an elected official. The definition of the term in New Rule I, and the prohibition against receiving in-kind donations of services in New Rule IV, are intended to make it absolutely clear that eligible elected officials may not seek assistance from, for example, lobbyists and principals, in providing services to constituents.

Comment 7: New Rule V, which lists authorized expenditures from constituent services accounts, does not specifically authorize the use of account funds for education, workshops, and conference participation. This is a common component of constituent services and the expenditure of funds for these purposes should be explicitly allowed.

Response 7: Although the commissioner believes that these types of expenditures would be permitted under subsection (1)(g) of the original rule proposal, the

commissioner has added a subsection to specifically reference these authorized expenditures.

Comment 8: A comment suggests that the records and reporting provisions in New Rule VII require too much detailed information for some constituent services and don't "seem to work for most activities. . . "

Response 8: While the commissioner appreciates this concern, the commissioner believes that detailed recordkeeping and documentation are necessary to comply with the Legislature's clear directive that: (1) only surplus campaign funds may be deposited into an account; (2) the holder of an account must disclose the source of all money deposited into an account and all expenditures made from the account; (3) the quarterly reports must include the same information as required for a candidate reporting contributions under 13-37-229, MCA and expenditures under 13-37-230, MCA; and (4) any expenditure must be consistent with the directive in 13-37-401 and 13-37-402, MCA, that such funds only be used for constituent services ("to represent and serve constituents"). The commissioner also believes that detailed written documentation will assist in the resolution of any complaints of violations of the statute and notes that the written log required in New Rule VII(4)(b) is to be kept by the account holder and is not part of the quarterly reporting that is required to be filed regularly with the commissioner. For these reasons, no changes have been made to New Rule VII.

Comment 9: A comment questions why ARM 44.10.335(6)(b) defines "campaign" to include ballot issue campaigns, since 13-37-240, MCA, is clearly limited to candidates.

Response 9: While the commissioner agrees that 13-37-240, MCA, which restricts disposal of surplus campaign funds, applies to candidates, the statute does not distinguish between candidate campaigns and ballot issue campaigns in prohibiting the contribution of surplus funds "to another campaign." The commissioner therefore declines to change the proposal in response to this comment.

Comment 10: A comment suggests that New Rule IV should more specifically address how constituent services accounts relate to leadership committee accounts.

Response 10: The language and history of HB 462, which enacted 13-37-401 and 13-37-402, MCA, indicate that the law applies prospectively to new constituent services accounts created after the effective date of HB 462 (May 14, 2007). The effect of HB 462, as enacted, is that pre-existing accounts, including leadership political committee accounts created by an elected official who is eligible to create a constituent services account, may continue to exist and are not subject to regulation if they were in existence on the effective date of HB 462. An eligible elected official may not, however, establish a new leadership political committee account. See 13-37-402(3), MCA. Elected officials other than those who are listed in New Rule III are not prohibited from establishing a new leadership political committee account. See 13-37-402(3), MCA. The references to pre-existing accounts and leadership political

committee accounts in New Rule IV are intended to clarify and provide guidance regarding the status of those accounts in the wake of the enactment of HB 462. In the judgment of the commissioner no further clarification or specificity is required.

/s/ Jim Scheier
Jim Scheier
Rule Reviewer

/s/ Dennis Unsworth
Dennis Unsworth
Commissioner of
Political Practices

Certified to the Secretary of State September 2, 2008.

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 June 30, 2008. This table includes those rules adopted during the period July 1, 2008, through September 30, 2008, and any proposed rule action that was pending during the past six-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 June 30, 2008, 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 2007 and 2008 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.

GENERAL PROVISIONS, Title 1

1.3.101	and other rules - Secretary of State's Model Rules, p. 1003, 1593
1.3.211	and other rules - Attorney General's Model Rules, p. 988, 1700

ADMINISTRATION, Department of, Title 2

I-IV	Mortgage Lender Surety Bond - Branch Office Licensing - Supervision of Branch Offices and Loan Officers - Responsibility for Acts of Agents, p. 862, 1579
2.6.205	and other rule - State Vehicle Use, p. 355, 614
2.13.202	and other rules - Implementing HB 27: Defining Eligibility and Distribution of HB 27 Surcharge Funds for Wireless 911 Emergency Systems, p. 210, 558
2.59.1401	and other rules - Regulation of Title Lenders - Title Loan Designation - Notification to the Department - Rescinded Loans - Failure to Correct Deficiencies - Department's Cost of Administrative Action - Examination Fees - Required Record Keeping - Sale of Repossessed Property - Unfair Practice, p. 846, 1571
2.59.1701	and other rules - Licensing and Regulation of Mortgage Brokers and Loan Originators - Continuing Education - Prelicensing Examination - Designated Managers - Examinations - Failure to Correct Deficiencies - Grounds for the Denial of an Application - Costs in Bringing the Administrative Action - Scheme to Defraud or Mislead, p. 666

(Public Employees' Retirement Board)
2.43.304 Actuarial Rates and Assumptions, p. 430, 1018

AGRICULTURE, Department of, Title 4

I-VII (Departments of Agriculture and Livestock) Montana Certified Natural Beef Cattle Marketing Program, p. 1, 564
4.2.101 and other rules - Model Procedural Rules - Wheat and Barley Procedural Rule - Public Participation Rule in the Mint Program - Hail Insurance Program Public Participation, p. 433, 942
4.4.303 Insured Crops, p. 215, 562
4.5.201 and other rules - Noxious Weed List Categories, p. 217, 563
4.6.302 Cherry Assessment, p. 1074, 1582
4.10.1806 Waste Pesticide Disposal and Recyclable Plastic Container Fees, p. 1364, 1800
4.17.102 Organic Program, p. 1518

STATE AUDITOR, Title 6

I-IV Debt Collections, p. 509, 943
6.2.124 and other rules - Judicial Review - Securities Regulation - Senior Specific Certifications and Designations - Filing Requirements for Transactional Exemptions, p. 1635
6.6.3101 and other rules - Long-Term Care, p. 222, 615
6.6.4201 Continuing Education Program for Insurance Producers, Adjusters, and Consultants, p. 868, 1455
6.6.5221 Small Business Health Insurance Purchasing Pool and Tax Credits, p. 436, 944
6.6.8301 (Classification Review Committee) Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 1173
6.6.8301 Updating References to the NCCI Basic Manual for New Classifications for Various Industries, p. 513, 1135
6.10.126 and other rule - Unethical Practices by Broker-Dealers and Salesmen Defined - Filing Requirements for Transactional Exemption, p. 1367, 1583

COMMERCE, Department of, Title 8

I Administration of Treasure State Endowment (TSEP) Grants Awarded by the 2007 Legislature, p. 872, 1308
I Administration of the 2008-2009 Federal Community Development Block Grant (CDBG) Program, p. 1850, 802
8.2.101 Incorporation of Model Rules by Reference, p. 1652
8.99.401 and other rules - Microbusinesses, p. 1730, 486, 624

(Montana Coal Board)
I Internal Management Procedures of the Montana Coal Board, p. 603

(Hard-Rock Mining Impact Board)
8.104.101 and other rules - Organizational and Procedural Rules of the Hard-Rock Mining Impact Board, p. 81, 945, 1309

(Board of Housing)
8.111.305 and other rule - Homeownership Program, p. 267, 1137

(Montana Heritage Preservation and Development Commission)
10.125.101 and other rules - Transfer from the Department of Education - Sale of Real and Personal Property by the Montana Heritage Preservation and Development Commission, p. 2026, 492

EDUCATION, Department of, Title 10

(Superintendent of Public Instruction)
10.7.101 and other rules - School Finance, p. 1176, 1692

(Board of Public Education)
10.54.6510 and other rules - Information Literacy/Library Media Content Standards and Performance Descriptors, p. 1223, 1693
10.54.7510 and other rules - Technology Content Standards and Performance Descriptors, p. 1198, 1696
10.55.907 Distance Learning, p. 1525
10.57.102 and other rules - Class 8 Licensure, p. 1521

FISH, WILDLIFE, AND PARKS, Department of, Title 12

(Department and Fish, Wildlife and Parks Commission)
12.2.501 and other rules - Gray Wolf Management in Montana, p. 1252

(Fish, Wildlife, and Parks Commission)
I Notice of Adoption of a Temporary Emergency Rule - Closing the Canyon Ferry Reservoir, Broadwater County, From the Silos to the Southern Shore, p. 1801
I Notice of Adoption of a Temporary Emergency Rule - Closing the Big Hole River, Silver Bow County, From Silver Bridge to Divide Bridge, p. 1698
I Notice of Adoption of a Temporary Emergency Rule - Closing the Yellowstone River From Carters Bridge to Highway 89 North Bridge, p. 1456, 1584
I Notice of Adoption of a Temporary Emergency Rule - Closing the Smith River From Camp Baker to Eden Bridge, p. 626, 805
I No Wake Zone on Echo Lake, p. 85, 1019
I No Wake Zone on Swan Lake, p. 87, 1024
I-III Delegating Commission Authority to the Department to Close Public Waters in the Event of a Fire Emergency, p. 520, 1317

I-VI Angling Restrictions and Fishing Closures, p. 516, 1310
12.6.2208 and other rules - Exotic Species, p. 1527

ENVIRONMENTAL QUALITY, Department of, Title 17

I-III Definitions - Certification of Energy Production, Transportation, and Research Facilities for Tax Abatement and Classification, p. 2046, 1027
17.50.501 and other rules - Licensing and Operation of Solid Waste Landfill Facilities, p. 688, 985

(Board of Environmental Review)
17.8.102 and other rules - Air Quality - Incorporation by Reference of Current Federal Regulations and Other Materials Into Air Quality Rules, p. 1371, 1743
17.8.505 and other rule - Air Quality - Air Quality Operation Fees and Open Burning Fees, p. 1378, 1745
17.30.502 and other rules - Water Quality - Subdivisions - CECRA - Underground Storage Tanks - Department Circular DEQ-7, p. 2035, 946
17.30.610 Water Quality - Surface Water Quality, p. 2043, 948
17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438
17.38.101 and other rules - Public Water Supply - Incorporation by Reference of Current Federal Regulations and Other Materials in the Public Water Supply Rules - Consecutive System Coverage, p. 1731

TRANSPORTATION, Department of, Title 18

18.6.202 and other rules - Transportation Commission - Outdoor Advertising Control, p. 1747
18.6.202 and other rule - Transportation Commission - Electronic Billboards, p. 523, 1458

CORRECTIONS, Department of, Title 20

I-V Notice of Public Hearing on Proposed Adoption - Confidentiality of Youth Records, p. 1382
20.7.801 Eastmont Chemical Dependency Treatment Program, p. 605, 1142
20.7.1101 and other rule - Conditions on Probation or Parole, p. 1984, 273, 1145

JUSTICE, Department of, Title 23

I-XXV Establishment of Peace Officers Standards and Training (POST), p. 732
1.3.211 and other rules - Model Rules, p. 988, 1700
23.6.106 Tow Truck Complaint Resolution, p. 1531

(Alternative Health Care Board)
24.111.407 and other rules - Nonroutine Applications - Licensing by Examination - Licensing by Endorsement - Natural Substance Formulary - Apprenticeship Requirements, p. 358, 1033

(Board of Architects and Landscape Architects)
24.114.401 and other rule - Fee Schedule - Examination, p. 11, 1481

(Board of Athletic Trainers)
24.101.413 and other rule - Renewal Dates and Requirements - Fees, p. 1094, 1705

(Board of Barbers and Cosmetologists)
24.121.301 and other rules - Definitions - Premises and General Requirements - Applications for Licensure - School-Facility and Operation - Teacher-Training Curriculum - Salons/Booth Rental - Sanitary Standards - Unprofessional Conduct - Anonymous Complaints - Disinfecting Agents - Blood Spills, p. 1502, 382

(Board of Chiropractors)
24.126.406 and other rules - Record of Minutes and Hearings - Applications - Exam Requirements - Temporary Permit - Endorsement - Inactive Status and Conversion to Active Status - Interns and Preceptors - Impairment Evaluators - Renewals and Continuing Education - Unprofessional Conduct - Continuing Education, p. 1097

(Board of Clinical Laboratory Science Practitioners)
24.129.401 and other rules - Fees - Supervision - Standards for Licensure - Unprofessional Conduct - Inspections - Notification, p. 1584, 629, 1482

(Board of Dentistry)
24.138.407 and other rules - Functions for Dental Hygienists - Specialty Advertising - Hygiene Diagnosis and Treatment Planning, p. 14, 566
24.138.502 and other rules - Licensure, p. 527, 1483

(Board of Medical Examiners)
24.156.1306 Professional Conduct - Standards of Professional Practice, p. 1751, 807

(Board of Nursing)
24.159.301 and other rules - Definitions - Foreign Educated Applicants for RN Licensure Requirements - APRNs, p. 875
24.159.301 and other rules - Definitions - Standards Related to the Practical Nurse - Prohibited IV Therapies, p. 279, 532, 1709

(Board of Occupational Therapy Practice)
24.165.404 and other rule - Licensure - Approved Instruction, p. 997, 1716

(Board of Optometry)
24.168.401 and other rules, Fees - Licensure - General Practice Requirements - Unprofessional Conduct, p. 1111

(Board of Outfitters)
24.171.401 and other rules, Fees - Emergency Guide License - Unprofessional Conduct, p. 1116

(Board of Pharmacy)
24.174.301 and other rules - Definitions - Fee Schedule - Ambulatory Surgical Facilities - Continuing Education, p. 447, 1151
24.174.401 Fee Schedule, p. 2051, 631

(Board of Plumbers)
24.180.301 and other rules - Definitions - Fees - Applications - Examinations - Journeyman Qualifications - Master Qualifications - Reciprocity - Temporary Practice Permits - Medical Gas Piping Endorsement - Reissuance of Retirement Status License, p. 1391

(Board of Private Alternative Adolescent Residential or Outdoor Programs)
24.101.413 and other rules - Renewals - Registration Fee Schedule - Fee Abatement - Licensing Fee Schedule, p. 451, 1031

(Board of Private Security)
24.182.401 and other rule - Experience Requirements, p. 89, 951

(Board of Public Accountants)
24.201.301 and other rules - Accounting, p. 1654

(Board of Real Estate Appraisers)
24.207.401 and other rules - Fees - Adoption of USPAP - Regulatory Reviews - Examination - Application Requirements - Education Requirements - Experience - Scope of Practice - Trainee Requirements - Mentor Requirements - Renewals - Continuing Education, p. 1402

(Board of Realty Regulation)
24.210.301 and other rules - Definitions - Licensure - Unprofessional Conduct - Supervising Broker Endorsement - Citations and Fines, p. 1679
24.210.641 Unprofessional Conduct, p. 366, 808

(Board of Speech-Language Pathologists and Audiologists)
24.222.301 and other rules - Definitions - Licensure - Temporary Practice Permits - Supervision - Functions of Aides or Assistants - Continuing Education, p. 2054, 385

SECRETARY OF STATE, Office of, Title 44

1.3.101 and other rules - Model Rules, p. 1003, 1593
44.3.102 and other rules - Elections, p. 930, 1329
44.5.111 and other rules - Business Entity and Uniform Commercial Code (UCC) Filings, p. 1562

(Commissioner of Political Practices)
I Limitations on Individual and Political Party Contributions, p. 471, 1034
44.10.335 and other rules - Constituent Services Accounts, p. 474, 1130