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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I pertaining to the Prison Rape Elimination Act and the amendment of ARM 20.9.602, 20.9.607, 20.9.609, 20.9.612, 20.9.613, 20.9.616, 20.9.617, 20.9.619, 20.9.620, 20.9.621, 20.9.623, 20.9.624, and 20.9.630 pertaining to licensure of youth detention facilities	)))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND AMENDMENT

TO: All Concerned Persons

1. On March 22, 2011, at 10:00 a.m., the Department of Corrections will hold a public hearing in room 4-65 of 5 South Last Chance Gulch, Helena, Montana, 59620, to consider the proposed adoption and amendment of the above-stated rules.

2. The Department of Corrections will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Corrections no later than 5:00 p.m. on March 16, 2011, to advise us of the nature of the accommodation that you need. Please contact Serenity Osborn, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-9609; fax (406) 444-0522; or e-mail SOsborn@mt.gov.

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

NEW RULE I PRISON RAPE ELIMINATION ACT (1) Each facility must have a written policy, procedure, and practice to ensure that information is provided to juveniles about sexual abuse/assault including:

(a) Each policy, procedure, and practice will include information regarding:

(i) prevention/intervention;

(ii) self-protection;

(iii) reporting sexual abuse/assault; and

(iv) treatment and counseling.

(b) The information will be communicated orally and in writing, in a language clearly understood by the juvenile, upon arrival at the facility.

(2) Each facility must have procedures to assure that juveniles are screened at the facility, via review of records and face-to-face interview, for potential vulnerabilities or tendencies of acting out with sexually aggressive behavior. Housing assignments will be made accordingly.

(3) Each facility must have a written policy, procedure, and practice requiring that an investigation will be conducted and documented whenever a sexual assault is alleged, threatened, or occurs.

(4) Each facility must have a written policy, procedure, and practice requiring that juveniles identified as at-risk for sexual victimization are assessed by a mental health or other qualified professional. Such juveniles are identified, monitored, and counseled.

(5) Each facility must have a written policy, procedure, and practice to ensure that sexual conduct between staff and juveniles, volunteers and juveniles, and contract personnel and juveniles, regardless of consensual status, is prohibited and subject to administrative and criminal disciplinary sanctions.

(6) All occurrences or allegations of sexual assault shall be referred to an appropriate medical facility for clinical assessment and gathering of forensic evidence by professionals who are trained and experienced in management of victims of sexual assault. If these procedures are performed in-house, the following guidelines shall be used:

(a) Provisions will be made for testing for sexually transmitted diseases (for example, HIV, gonorrhea, hepatitis, and other diseases) and release of information for purposes of medical management of both the victim and alleged perpetrator;

(b) A history will be taken by healthcare professionals who conduct an examination to document the extent of physical injury and to determine if referral to another facility is indicated. With the victim's consent, the examination includes collection of evidence from the victim, using a kit approved by the appropriate authority;

(c) Prophylactic treatment and follow-up for sexually transmitted diseases will be offered to all victims, as appropriate, if not already done in the emergency room;

(d) Follow-up by a mental health professional will be offered to assess the need for crisis intervention counseling and long-term follow-up; and

(e) A report will be made to the facility or program administrator or designee to assure separation of the victim from the youth's assailant.

(7) Each facility will have a written policy, procedure, and practice to provide that juveniles who are victims of sexual abuse and/or assault have the option to report the incident to a designated staff member other than an immediate point-of-contact line staff member.

(8) Each facility will have a written policy, procedure, and practice to provide that all case records associated with claims of sexual abuse and/or assault, including incident reports, investigative reports, juvenile information, case disposition, medical and counseling evaluation findings, and recommendations for post-release treatment and/or counseling are retained in accordance with an established schedule.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to adopt New Rule I to comply with the Prison Rape Elimination Act (PREA) of 2003. Public Law 108-79 codified at 42 USC § 15601. PREA is a federal

act establishing requirements for preventing and eliminating rape of offenders within the correctional system including juveniles.

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

20.9.602 DEFINITIONS The following definitions apply to all youth detention facility licensing rules:

(1) through (4) remain the same.

(5) "Department" means the ~~d~~Department of ~~c~~Corrections as provided for in 2-15-2301, MCA.

(6) through (12) remain the same.

(13) "Mechanical restraint" means handcuffs, belly chains, shackles, or leg irons.

(14) remains the same.

(15) "PREA" means Prison Rape Elimination Act.

~~(15)~~(16) "Privileged correspondence" is correspondence between a youth and the youth's attorney, courts, government officials, facility director, or probation/parole officers.

(16) through (17)(c) remain the same but renumbered (17) through (18)(c).

(d) sexual abuse/assault by another youth or staff;

(e) injury to a youth, staff, or visitor which requires hospitalization; or

(f) the death of a youth, staff, or visitor.

(18) through (21) remain the same but renumbered (19) through 22).

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.602 to add a new definition for PREA and to improve writing style and clarify definitions.

20.9.607 CONFIDENTIALITY, DISPOSITION, AND DISSEMINATION OF RECORDS AND INFORMATION (1) and (2) remain the same.

(3) Each facility must remove and destroy all Department of Corrections and Youth Court records from a youth's file when the youth reaches the age of 18. All detention facility documents may be kept according to facility policy in accordance with 41-5-216, MCA.

AUTH: 41-5-1802, MCA
IMP: 41-5-216, 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.607 to add language to comply with 41-5-216, MCA.

20.9.609 ESCAPES (1) Escapes must be reported immediately to ~~the~~ law enforcement, ~~and to~~ the youth's probation officer, parent or legal guardian, and licensing specialist.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.609 to improve writing style.

20.9.612 MANAGEMENT, STAFF, AND TRAINING (1) and (2) remain the same.

(3) The facility shall employ, train, and supervise an adequate number of staff, including immediately available same gender on-site staff, in order to provide continuous awake supervision of youth ~~and at least one immediately available on-site staff member of the same gender as the youth~~.

(a) through (ii) remain the same.

(b) No staff member or other person having direct contact with the youth in the facility shall conduct themselves in a manner which poses any potential threat to the health, safety, or well-being of the youth in detention.

(4) remains the same.

(a) ~~post secondary degree or extensive/~~relevant experience working with youth;

(b) remains the same.

(c) have successfully passed background checks by both law enforcement and the ~~c~~Child ~~p~~Protective ~~s~~Services ~~d~~Division of the ~~d~~Department of ~~p~~Public ~~h~~Health and ~~h~~Human ~~s~~Services;

(d) be physically, mentally, and emotionally competent to care for youth; and

(e) understand the purpose of the youth detention facility and be willing to carry out its policies and programs~~; and~~.

(5) through (5)(a) remain the same.

(b) each new juvenile detention officer in the first year of employment complete 120 hours of training as defined by American ~~c~~Correctional ~~a~~Association (ACA) standards ~~(1-SJD-1D-05),~~ and applicable Montana law;

(c) remains the same.

(d) cardiopulmonary resuscitation (CPR) and First Aid training be accomplished annually by each youth care staff member in addition to the required 20 hours of annual training.

(6) remains the same.

(a) ~~be certified~~ certification in ~~cardiopulmonary resuscitation (~~CPR~~)~~;

(b) ~~orientation to the~~ purpose, goals, policies, and procedures of the facility;

(c) through (j) remain the same.

(k) communicable diseases and blood-borne pathogens; ~~and~~

(l) the provisions of the Montana Youth Court Act~~.~~; and

(m) PREA.

(7) remains the same.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.612 to comply with the Prison Rape Elimination Act (PREA), to delete the requirement for staff to have a postsecondary degree because facilities cannot fill staff positions if staff is required to have a postsecondary degree and ACA standards do not require a postsecondary degree, to reflect current ACA standards, and to improve writing style and clarify language.

20.9.613 ENVIRONMENT (1) The facility shall provide an adequate and potable supply of water.

(a) The facility shall:

~~(a)~~ (i) connect to a public water supply system approved by the Montana ~~d~~Department of ~~e~~Environmental ~~q~~Quality; or

~~(b)~~ (ii) for a facility utilizing a nonpublic water system, ~~the department hereby adopts and incorporates by reference the following circulars setting forth relevant water quality standards prepared by and available from the Department of Environmental Quality, 1520 E. Sixth Avenue, Helena, MT 59620:~~ follow and conform to all Montana Department of Environmental Quality rules, regulations, and standards for small water systems.

~~(i) circular #11 for springs;~~

~~(ii) circular WQB 3 - Montana Department of Environmental Quality standards for small water systems (1992 edition); and~~

~~(iii) circular #17 for cisterns.~~

~~(c)~~ (b) If a nonpublic water supply is used, the facility shall submit a water sample at least once a quarter (January 1 - March 31, April 1 - June 30, July 1 - September 30, and October 1 - December 31) to a laboratory licensed by the Montana ~~d~~Department of ~~p~~Public ~~h~~Health and ~~h~~Human ~~s~~Services for a coliform bacteria test of the system and a nitrate test of the system at least once every three years. Bacteriological testing of a water supply must be in accordance with ARM 17.38.215.

(i) Sampling results must be kept at the facility and a copy of the results provided to the department and the local Montana ~~d~~Department of ~~p~~Public ~~h~~Health and ~~h~~Human ~~s~~Services.

(ii) remains the same.

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

~~(e)~~ (d) Extension, alteration, repair, and replacement of a water supply system, or development of a new water supply system must be in accordance with ~~ARM 17.36.301 through 17.36.305,~~ the Montana Department of Environmental Quality regulations ~~and if the system is a public water supply system, ARM 17.38.101 through 17.38.105~~.

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

~~(g)~~ (f) ~~The department hereby adopts and incorporates by reference the provisions of ARM 17.38.101 through 17.38.105, which describe water system review requirements for public water supply systems, ARM 17.36.301 through 17.36.305, which describe water system review requirements for subdivisions; ARM~~

~~17.38.201 through 17.38.207, which set maximum contaminant levels; and ARM 17.38.214, which describes bacteriological water sample testing requirements. Copies of the above-mentioned rules may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901~~ Facilities must follow and conform to all Montana Department of Environmental Quality rules and regulations relating to review procedures and testing requirements.

(2) An adequate and safe sewage system must be provided for conveying, treating, and disposing of all sewage. Immediate measures must be taken to alleviate health and sanitation hazards caused by sewage at the youth detention facility.

(a) To ensure sewage is safely disposed of, the facility shall either:

~~(a)~~ (i) connect to a public sewer approved by the Montana ~~d~~Department of ~~e~~Environmental ~~q~~Quality; or

~~(b)~~ (ii) If a nonpublic system is utilized, follow and conform to all applicable Montana Department of Environmental Quality standards, rules, and regulations ~~the department hereby adopts and incorporates by reference the following circulars which set forth standards for sewage disposal. Copies of the circulars may be obtained from the Department of Environmental Quality at the above address~~.

~~(i) circular WQB 4 - Montana Department of Environmental Quality standards for multi-family sewage systems and public subsurface sewage treatment systems (1992 edition); and~~

~~(ii) circular WQB 5 - Montana Department of Environmental Quality minimum design standards for on-site alternative sewage treatment and disposal systems (1992 edition).~~

(c) through (c)(iii) remain the same but are renumbered (b) through (b)(iii).

(iv) a mechanical failure occurs, including electrical outage, or collapse or breakage of a septic tank, lead line, or drain field line.

~~(d)~~ (c) Extension, alteration, replacement, or new development of any sewage system must be in accordance with all applicable rules, regulations, and standards of the Montana Department of Environmental Quality ~~ARM 17.36.301 through 17.36.305 and, if the system is a public sewage system, ARM 17.38.101 through 17.38.105~~.

~~(e)~~ (d) Liquid wastes from sinks, showers, toilets, or baths are not allowed to accumulate on the ground surface. Such waste must be discharged into the sewage system approved by the Montana ~~d~~Department of ~~e~~Environmental ~~q~~Quality or the local health authority.

~~(f) The department hereby adopts and incorporates by reference the provisions of ARM 17.36.301 through 17.36.305 setting standards for sewage treatment and disposal systems, and ARM 17.38.101 through 17.38.105, setting requirements for public water and sewer plans and cross connections. Copies of the above rules may be obtained from the Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.~~

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

(c) transport or utilize a private or municipal hauler to transport the solid waste in a covered vehicle or covered containers at least weekly to a landfill site approved by the Montana ~~d~~Department of ~~e~~Environmental ~~q~~Quality or a local solid waste district.

(4) and (5) remain the same.

(6) There must be hot and cold water available in the facility. Hand sinks must be provided with water at a temperature not more than 120°F. ~~and b~~Bathing facilities must be provided with water at a temperature of at least 100°F and not more than 120°F. Youth should be encouraged to shower or bathe at least three times per week.

(7) remains the same.

(a) Sheets, pillow ~~covers~~ cases, towels, and washcloths must be machine washed at a minimum temperature of 130°F for a minimum time of eight minutes and dried in a hot air tumble dryer or ironed to a minimum temperature of 150°F. Appropriate detergents and sanitizers must be used.

(b) and (c) remain the same.

(d) All bedding, towels, and washcloths provided by the youth detention facility must be clean and in good repair. Clean, laundered bed sheets and pillow cases must be provided on each bed and must be replaced by clean, freshly laundered sheets and pillow cases after the departure of each youth and prior to occupancy by the next youth. Clean bedding and linens must be available to each youth at least weekly or more often, as necessary.

(8) remains the same.

(9) Cleaning compounds and pesticides must be stored, used, and disposed of in accordance with the manufacturer's instructions. Material Safety Data Sheet (MSDS) book must be maintained and updated.

(10) remains the same.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.613 to reflect that water quality standards are the responsibility of the Montana Department of Environmental Quality and are covered in their rules, regulations, and standards and that detention centers must adhere to Montana Department of Environmental Quality rules, regulations, and standards in these areas. The department also proposes to amend this rule to adopt OSHA and ACA requirements and standards. The Department of Corrections also proposes to amend this rule to improve writing style and clarify language.

20.9.616 FIRE SAFETY (1) and (2) remain the same.

(3) Written policy, procedure, and practice must provide for a comprehensive and thorough weekly inspection of the facility by a ~~qualified~~ designated staff member for compliance with safety and fire prevention standards. This policy and procedure must be reviewed annually and updated as needed.

(4) through (7) remain the same.

(8) All facility personnel must be trained in the implementation of written emergency plans. ~~Work stoppage and riot/disturbance plans may be communicated only to appropriate supervisory or other personnel directly involved in the implementation of those plans.~~

(9) remains the same.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY**:** The Department of Corrections proposes to amend ARM 20.9.616 to clarify language and to move language regarding work stoppage and riot/disturbance plans to a more appropriate location.

20.9. 617 SAFETY AND SECURITY (1) through (3)(f) remain the same.

(g) preventing escapes;

(g) and (h) remain the same but renumbered (h) and (i).

(4) and (5) remain the same.

(6) All living and sleeping areas must be kept free of bars, grates, hooks, or any other physical features which may reasonably be expected to present a suicide risk to youth.

(7) through (10) remain the same.

(11) Work stoppage and riot/disturbance plans may be communicated only to appropriate supervisory or other personnel directly involved in the implementation of those plans.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.617 to comply with American Correctional Association Standards for Juvenile Detention Facilities, 3-JDF-3B-13; to include language regarding work stoppage and riot/disturbance moved from ARM 20.9.616; and to improve writing style.

20.9.619 ADMISSION (1) through (4)(c) remain the same.

(d) the youth's personal property, if removed, must be properly itemized, signed for by the youth and staff, and held safely. The youth must be advised that all personal belongings will be returned to ~~him~~ the youth when ~~he~~ the youth leaves, with the exception of illegal contraband or evidence;

(e) through (f)(ii) remain the same.

(iii) pillow and pillow case or integrated pillow/mattress system;

(iv) through (vi) remain the same.

(g) Youth uniforms must be laundered or exchanged at least twice a week. The youth's own clothing must be laundered ~~if needed~~ and safely stored.

(5) The facility shall provide youth, without charge, with the following articles necessary for maintaining personal hygiene ~~and without charge to indigent youth~~:

(a) through (c) remain the same.

(d) comb; ~~and~~

(e) products for female hygiene needs;

(f) deodorant; and

(g) hand towel.

(6) through (6)(k) remain the same.

(l) emergency contact number of placing agency; ~~and~~

(m) a violence risk assessment;

(n) PREA screening; and

(o) suicide risk screening by nationally recognized assessment screening tool.

(7) through (7)(a) remain the same.

(b) Any prescription medication in the possession of a youth at admission must be labeled for identification and determination must be made at the earliest possible time regarding the need for its continued use by contacting the prescribing health care professional. A written record of the diagnosis, treatment, and medication prescribed must be ~~placed in the youth's detention file~~ maintained in the facility files.

(8) remains the same.

(9) If a youth is hungry at admission, ~~he~~ the youth must be given sufficient food to sustain the youth until the next regular meal.

(10) After a youth has been admitted, showered, issued clothing and other essentials, but prior to disciplinary action or integration with other youth and within 24 hours of admission, the youth shall receive orientation and a printed copy of ~~on~~ the ~~policies and procedures of the~~ detention facility rules and youth rights ~~prior to disciplinary action or integration with other youth and within 24 hours of admission~~.

(a) ~~The youth must be given a copy of the printed facility rules and the youth's rights.~~ Staff shall explain or clarify the contents of the material, especially for:

(i) youth who do not have adequate reading or comprehension skills;

(ii) disabled youth; and

(iii) youth who do not speak English.

(b) through (11) remain the same.

(12) Facility policy and procedure must grant all youth the right to make at least two local or long-distance telephone calls to family members, attorneys, or other approved individuals at some time during the admission process.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.619 to comply with the Prison Rape Elimination Act (PREA) of 2003; to reflect that only integrated pillow and mattress systems are available for purchase; to clarify that all youth's clothing are required to be laundered when entering the juvenile detention center to avoid contamination of other youth's stored clothing; to maintain medication information within the facility but not within the youth's file because medication information is not appropriate in the youth's file; to clarify that youth do not need to know all juvenile detention facility policies and procedures, only the rules and rights that are pertinent to them; to clarify specific youth that the facility must assist; to make the rule gender neutral; and to improve writing style and clarify language.

20.9.620 RIGHTS OF YOUTH (1) through (4) remain the same.

(5) Youth will be offered at least one hour of large muscle exercise during each 24-hour period.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.620 to comply with American Correctional Association Standards for Juvenile Detention Facilities, 3-JDF-5E-04.

20.9.621 COMMUNICATION/MAIL (1) through (1)(b) remain the same.

(c) At the youth's request, the facility ~~may~~ shall provide postage for the mailing of a maximum of two letters per week ~~for each youth~~.

(d) Appropriate stationery, envelopes, and a writing implement must be supplied.

(e) Written policy and procedure must specify that youth are permitted to send sealed letters to a specified class of persons and organizations and privileged correspondence including but not limited to courts, counsel, officials of the confining authority, administrators of grievance systems, and members of the releasing authority.

(f) through (i) remain the same.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.621 to make providing postage a requirement and not permissive to comply with American Correctional Association Standards for Juvenile Detention Facilities, 3-JDF-5G-03. The Department of Corrections also proposes to amend ARM 29.9.621 to improve writing style.

20.9.623 HEALTH CARE (1) through (4)(a)(vi) remain the same.

(b) ~~O~~observation of:

(i) through (iii) remain the same.

(c) ~~M~~medical disposition of youth:

(i) through (iii) remain the same.

(5) Written policy, procedure, and practice must provide for 24-hour emergency medical, dental, and mental health care availability as outlined in a written plan that includes arrangements for the following:

(a) through (f) remain the same.

(6) Written policy, procedure, and practice must provide that direct care staff and other personnel are trained to respond to a health-related emergency within a ~~five~~ four-minute response time. A training program must be established by the facility director under the supervision of and in cooperation with the responsible health authority. The plan must include the following:

(a) through (7) remain the same.

(8) Written policy must prohibit the use of youth for medical, pharmaceutical,

or cosmetic experiments. Policy may not preclude individual treatment of a youth based on ~~his/her~~ the youth's need for a specific medical procedure that is not generally available.

(9) and (10) remain the same.

(11) If a youth's ~~custody~~ condition or status precludes attendance at sick call, the facility must make arrangements ~~must be made~~ to provide sick call services ~~at~~ to the ~~place of the youth's detention~~ youth.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.623 to comply with American Correctional Association Standards for Juvenile Detention Facilities, 3-JDF-4C-27 and to improve writing style and clarify language.

20.9.624 SERVICES AND PROGRAMS (1) through (2)(a) remain the same.

(b) Psychiatric, psychological, medical, and other diagnostic services, as determined by the youth court, must be available to every youth either provided directly by the facility or by contracting with ~~another county or agency~~ an outside agency or licensed provider which provides such services.

(c) through (5) remain the same.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.624 to specify the entities with which the facility may contract for psychiatric, psychological, and medical services.

20.9.630 MECHANICAL RESTRAINT (1) through (3) remain the same.

(4) ~~A youth who is mechanically restrained~~ The facility ~~may~~ shall not:

(a) ~~be denied~~ deny food to a youth who is mechanically restrained; or

(b) subject~~ed to~~ a youth to corporal punishment or abusive or degrading treatment.

(5) through (7)(a) remain the same.

(b) The use of mechanical restraint must be for the minimum period of time necessary to enable the youth to gain control of ~~his~~ the youth's behavior and if in excess of one hour, the youth must be evaluated by a mental health professional;

(c) through (8) remain the same.

(9) Facility staff must be trained by a ~~p~~Peace ~~o~~Officer ~~s~~Standard ~~t~~Training (POST) certified trainer in the use and effect of mechanical restraint.

(10) and (11) remain the same.

AUTH: 41-5-1802, MCA
IMP: 41-5-1802, MCA

STATEMENT OF REASONABLE NECESSITY: The Department of Corrections proposes to amend ARM 20.9.630 to make the rule gender neutral, and to improve writing style and clarify language.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Serenity Osborn, Department of Corrections, 5 South Last Chance Gulch, Helena, Montana, 59620; telephone (406) 444-9609; fax (406) 444-0522; or e-mail SOsborn@mt.gov, and must be received no later than 5:00 p.m., March 24, 2011.

6. Diana Koch, Department of Corrections, has been designated to preside over and conduct this hearing.

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

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

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

/s/ Diana Koch	/s/ Mike Ferriter
Diana Koch	Mike Ferriter
Rule Reviewer	Director
	Department of Corrections

Certified to the Secretary of State February 14, 2011.

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

In the matter of the amendment of ARM 24.7.301, 24.7.304, 24.7.305, 24.7.306, 24.7.308, 24.7.312, 24.7.315, and 24.7.316, and the adoption of NEW RULE I, pertaining to the Board of Labor Appeals; the amendment of 24.11.204, 24.11.207, 24.11.320, 24.11.450A, 24.11.452A, 24.11.454A, 24.11.455, 24.11.457, 24.11.458, 24.11.475, 24.11.616, 24.11.1207, 24.11.2407, 24.11.2511 and 24.11.2515; and the adoption of NEW RULES II through X, pertaining to unemployment insurance	)))))))))))))))))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND ADOPTION

TO: All Concerned Persons

1. On March 17, 2011, at 10:00 a.m., the Department of Labor and Industry (Department) and the Board of Labor Appeals (Board) will hold a public hearing to be held in the Sanders Auditorium of the DPHHS Building, 111 North Sanders, Helena, MT to consider the proposed amendment and adoption of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on March 15, 2011, to advise us of the nature of the accommodation that you need. Please contact the Unemployment Insurance Division, Department of Labor and Industry, Attn: Don Gilbert, P.O. Box 8020, Helena, MT 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-5549; or e-mail dgilbert@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2009 Montana Legislature enacted Chapter 88, Laws of 2009 (Senate Bill 150), an act generally revising unemployment insurance laws, and Chapter 489, Laws of 2009 (House Bill 645), which revised the base period for unemployment benefits and provided for part-time work and participation in worker training for unemployment purposes. The board (chapter 7) and department (chapter 11) determined it is reasonably necessity to amend existing rules and adopt new rules for the unemployment insurance division to implement the legislation regarding part-time workers qualifying for unemployment insurance benefits, the appointment, service, and compensation of a substitute member of the board, and the authorization of additional training benefits for unemployed workers.

The board is amending several rules in subchapter 3 to better facilitate the board's timely consideration of appeals. The board has recently experienced a dramatic increase in the number of unemployment insurance benefit and tax appeals pending board review. Therefore, the board is amending subchapter 3 to set reasonable timelines for submission of new evidence, distinguish between documentary evidence and argument in new material before the board, and clarify the applicability of the rules of evidence and civil procedure in board proceedings. The board is also replacing references to a board hearing with the correct terms for board review or board proceeding to eliminate confusion between the board review process and the actual contested case hearing procedure through the department hearings bureau. The board concluded that these amendments will clarify board processes and enable the board to better serve those Montanans with pending unemployment benefit appeals.

The department is also amending the rules and catch phrases throughout to correct grammar, define relevant terms, simplify wording, clarify meaning, improve rule organization, delete erroneous effective dates, and comply with rule formatting and numbering requirements. Where additional specific bases for a proposed action exist, the department will identify those reasons immediately following that rule. Lastly, authority and implementation cites are being amended to provide the complete sources of the board's or department's rulemaking authority and to accurately reflect all statutes implemented through the rules.

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

24.7.301 POLICY (1) It is the intent of this board insofar as is practical to keep appeal procedures as simple, speedy, and inexpensive as possible. The board ~~hearing on~~ review of an appeal of a hearing officer's decision must be fair and conducted in accordance with procedural safeguards. The essential requisites of fairness include but are not limited to the following elements:

(a) through (c) remain the same.

(2) A decision of the board must be based solely on substantial evidence as revealed by the files, records, and any new evidence taken at the ~~appeal hearing~~ board review proceeding to support it.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

24.7.304 RIGHT TO APPEAL (1) through (4) remain the same.

(5) Upon scheduling of an appeal, the board shall give interested parties written notice of the date, time, and place of ~~hearing~~ the board review, and such notice shall be mailed to such parties at least ten days prior to the date of the board's ~~hearing~~ review.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

24.7.305 ~~HEARING PROCEDURE~~ BOARD REVIEW PROCEDURE (1) The board ~~hearing~~ review on an appeal of a hearing officer's decision shall be conducted informally, and in such manner as to ascertain the substantial rights of the parties. All issues relevant to an appeal shall be considered and passed upon.

(2) The board may review written argument and hear oral argument from any interested party concerning the findings of fact and the conclusions of law reached by the hearing officer. The board does not hear cross-examination by any opposing interested parties and any new material introduced for the board review must be introduced in accordance with ARM 24.7.312.

(3) An interested party to an appeal before the board may appear at any ~~conference or hearing~~ proceeding held in such appeal, either on the party's own behalf, by an attorney at law, or through an authorized lay representative as prescribed by (4).

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

(i) an employee of the employing unit ~~that is subject to a benefit charge~~ or the owner of that employing unit as long as employee's or owner's typical duties include handling unemployment insurance matters for the employing unit and the employee or owner is not receiving separate remuneration; or

(ii) remains the same.

(c) remains the same.

(5) At the scheduled date and time of the board proceeding, the board will make two attempts to reach each interested party at the telephone number(s) provided. If the board is unable to reach a party and/or the party fails to appear or make a request to continue, the board will make a determination pursuant to ARM 24.7.306.

~~(5)~~ (6) At any time prior to the issuance of the board's decision, the board may at its discretion continue a ~~hearing~~ proceeding in order to secure evidence or argument that is necessary and to be fair to the parties, but in no case may the ~~hearing~~ board's review be continued without ~~review~~ board action for more than 60 days beyond the date originally set for ~~hearing~~ the board proceeding. In the event that a scheduled ~~hearing~~ board proceeding is continued, the ~~hearing~~ board review shall be rescheduled with due notice to all interested parties.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-1109, 39-51-2404, 39-51-2407, MCA

REASON: The board is amending (4)(b)(i) to align the definitions of those appearing before the board throughout the board rules, including ARM 24.7.316 and 24.11.207.

24.7.306 DETERMINATION OF APPEALS (1) The department shall transmit to the board all records that are pertinent to the appeal including documents not admitted into the record by the hearing officer. The board will consider such records or portions of those records as the board deems appropriate. As soon as possible after the hearing, the board will decide whether to reverse, modify, or affirm the decision of the hearing officer. Written notice of the board's action will be ~~mailed~~ sent to all interested parties.

(2) The board will review the hearing officer's decision for errors of law or fact. In making its determination, the board will consider the record transmitted on appeal, written or oral arguments, as well as any new ~~evidence~~ material admitted pursuant to ARM 24.7.312.

(3) If the appealing party fails to appear at the board ~~hearing~~ proceeding and no good cause for continuance is shown, the board shall render its decision on the basis of the record. If the decision on appeal to the board is based on the best evidence available pursuant to ARM 24.11.320, the board may render its decision based on the best available evidence.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-310, 39-51-1109, 39-51-2404, 39-51-2407, MCA

24.7.308 CHALLENGES, DISQUALIFICATIONS (1) No member of the board shall participate in the ~~hearing~~ review proceeding of any appeal in which he has an interest nor shall any such member appeal in which he has an interest nor shall any such member represent any interested party or witness at any ~~appeal hearing~~ board proceeding. Any interested party may challenge any member of the board in writing, served upon the chairman of the board, five days in advance of any scheduled ~~appeal hearing~~ board proceeding stating the reasons therefore, and if the board shall find merit in the challenge, it shall disqualify the challenged member and appoint ~~another person~~ the substitute member to hear the appeal if it deems such appointment advisable.

AUTH: 2-4-201, MCA
IMP: 2-4-201, 2-15-1704, MCA

24.7.312 ~~EVIDENCE~~ NEW MATERIAL BEFORE THE BOARD (1) All new material introduced at the board proceeding must be mailed or delivered to the board administrative assistant and all other parties no later than five days prior to the scheduled board proceeding or the material will not be considered by the board.

~~(1)~~ (2) The board will not consider any new material ~~evidence~~ introduced ~~at~~ for the board ~~hearing~~ review if it is documentary evidence unless good cause is shown why the new documentary evidence was unavailable ~~that it was unavailable~~ at the hearing before the hearing officer. New material introduced ~~at~~ for the board ~~hearing~~ review that is argument and not documentary evidence will be admitted. ~~If new evidence is admitted, it must be the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.~~

(3) The rules of evidence and civil procedure are not binding in board administrative proceedings for unemployment insurance matters. If new documentary evidence is admitted by the board, it must be the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(2) remains the same but is renumbered (4).

AUTH: 2-4-201, MCA
IMP: 2-4-201, 39-51-2404, 39-51-2407, MCA

24.7.315 STANDARDS AND PROCEDURES FOR RECONSIDERATION OF DECISIONS (1) As used in this rule, the following definitions apply:

(a) "Petition" means a petition for ~~rehearing or~~ reconsideration of a board decision.

(b) "Requester" means the interested party requesting a petition for ~~rehearing or~~ reconsideration of a board decision.

(2) and (3) remain the same.

(4) Petitions are addressed ~~to~~ at the sole discretion of the board.

(5) and (5)(a) remain the same.

(b) to present relevant evidence that was not known or discoverable with reasonable diligence by the requester at the time of the ~~hearing~~ board review proceeding;

(c) remains the same.

(d) to present argument because good cause exists for failing to appear at the previously scheduled board ~~hearing~~ review proceeding.

(6) The petition must state the ground or grounds upon which reconsideration is sought and a detailed statement as to why the requested ~~rehearing or~~ reconsideration will likely mandate a change in the board's decision.

(7) The board shall rule upon the petition at its next regular meeting and notify the parties of its decision. In the event there is a finding of good cause to grant the petition, the ~~hearing~~ board review shall be rescheduled with due notice to all interested parties.

(8) remains the same.

AUTH: 2-4-201, MCA
IMP: 2-4-201, ~~2-15-102,~~ 39-51-1109, 39-51-2404, 39-51-2407, MCA

24.7.316 INTERESTED PARTY (1) An interested party is defined at ARM 24.11.207.

~~(1)~~ (2) An interested party is entitled to receive notice of Board of Labor Appeals proceedings as well as a copy of the board's decision. ~~An interested party will be given~~ The board shall provide an interested party an opportunity to participate in the board's hearing on the appeal. An interested party may petition for review of a board decision by the district court.

~~(a) A claimant is an interested party in an appeal of the claimant's benefits determination decision.~~

~~(b) An employer is an interested party to an appeal that is determinative of whether benefits paid to a claimant are chargeable to that employer's account.~~

~~(c) An employer is an interested party to an appeal of decision on contribution, liability, contribution rate, application for refund, subject wages, self-employment, or other contribution-related issues.~~

~~(d) The department is an interested party.~~

~~(e) Any party who, upon written application to the board, is found to have a substantial interest in an issue may be deemed to be an interested party relative to the appeal.~~

AUTH: 2-4-201, MCA

IMP: 2-4-201, 39-51-1109, 39-51-2404, MCA

REASON: The board is amending this rule to clarify that interested parties to a board proceeding must meet the definition at ARM 24.11.207, and align the definitions between board review proceedings and the adjudication of unemployment insurance claim benefits and employer tax liability by the department. While persons with relevant information may testify at a hearing before the board, only persons or entities with a financial stake in the outcome of a proceeding are deemed interested parties. The amendment will further facilitate the board's efficient review of cases.

24.11.204 DEFINITIONS remains the same.

(1) through (26) remain the same.

(27) "Part-time work" means insured work that is less than 40 hours per week.

(27) through (30) remain the same but are renumbered (28) through (31).

(32) "Similar work" means work in the same occupation or a different occupation that requires essentially the same skills and knowledge as the worker's current or most recent employment but does not mean identical work.

(33) "State-approved training program" means a program the department determines is reasonably expected to lead to employment for a claimant and meets the criteria outlined by ARM 24.11.475.

(34) "Suitable work" means work the department determines a claimant is reasonably suited to perform by experience, education, or training. Suitable work is further described by [NEW RULE VIII].

(31) through (36) remain the same but are renumbered (35) through (40).

(41) "Work week" or "week of work" is a week as defined in 39-51-201, MCA, in which the claimant earns wages that are covered by unemployment insurance.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-2111, 39-51-2112, 39-51-2115, 39-51-2116, 39-51-2304, MCA

REASON: The department is amending this rule to define several terms used and implemented through the 2009 legislation. The term "suitable work" is commonly used within the unemployment insurance program, but has never previously been defined in rule. The term is further delineated in New Rule VIII.

24.11.207 ~~DETERMINING WHO IS AN~~ INTERESTED PARTY ~~(1) An "interested party" is a person entitled to:~~

~~(a) receive notice of certain issues and proceedings relative to a claim;~~

~~(b) receive notice of determinations, redeterminations, and decisions relative to those issues; and~~

~~(c) contest determinations, redeterminations, or decisions relative to those issues.~~

~~(2)~~ (1) A claimant is an interested party to proceedings that adjudicate ~~any and all issues relative to the~~ claimant's ~~claim~~ eligibility and qualification for unemployment insurance benefits.

~~(3)~~ (2) The department is an interested party to proceedings that adjudicate any and all issues ~~relative~~ related to ~~any claim~~ benefit claims and employer tax liability.

~~(4)~~ (3) An employer who paid wages to the claimant is an interested party to ~~any issue~~ proceedings that adjudicate claimant's separation from employment with that employer. Proceedings that adjudicate claimant's separation from employment during the base period of a claim determine ~~that is determinative of~~ whether ~~all or~~ any portion of benefits paid to a claimant are chargeable to ~~that~~ the base period employer's account pursuant to 39-51-1125, 39-51-1212, or 39-51-1214, MCA. An employer is not an interested party to proceedings that adjudicate nonseparation issues related to a claim.

(4) An employer is an interested party to proceedings that adjudicate the employer's own tax liability, contribution rate, application for refund, subject wages and other tax contribution-related issues.

~~(5) If a claimant refuses an offer of work, the employer making the offer is an interested party with respect to the issue of whether the claimant will be disqualified for failing to accept an offer of suitable work pursuant to 39-51-2304, MCA, but only if the claimant was employed by and earned wages from the employer after the beginning of the base period of the claim and prior to the offer of work.~~

~~(6) Any person who, upon written application, is found by the department to have a substantial interest in an issue may be deemed to be an interested party relative to that issue.~~

~~(7) A person described in (4) through (6) does not continue to be an interested party once the issues described therein are adjudicated and become final. Unless the person is found to be an interested party to issues that may subsequently arise, the person is not entitled to notice of those issues or notice of determinations, redeterminations or decisions relative to those issues nor does the person have standing to contest those determinations, redeterminations, or decisions.~~

~~(8)~~ (5) Any person may ~~raise an issue relative to any and, provided the person's allegations are credible, the department may investigate the issue and make a determination of the claimant's eligibility for benefits.~~ provide the department with information relevant to an investigation or determination of a benefit claim or an employer's tax liability. ~~However, the person raising the issue, unless the~~ Unless a person is an interested party to a proceeding, ~~is not notified~~ the department shall not notify the person of the determination and the person does not have standing to contest the determination.

(6) Only an interested party to an unemployment insurance proceeding has standing to request a redetermination, contested case hearing, or appeal to the Board of Labor Appeals.

(7) The department shall provide written notice of a determination, redetermination, contested case hearing, and appeal only to the identified interested parties to a particular proceeding as defined by this rule.

AUTH: 39-51-301, 39-51-302, MCA
IMP: Title 39, Chapter 51, Parts 11 and 12, 21 through 24, and 32, MCA

REASON: The department is amending this rule to address confusion between the standing to participate as an interested party in proceedings to determine unemployment insurance eligibility and benefits and those to determine an employer's tax liability or contribution. The amendments will remove the provision for individuals to apply for interested party status as the department concluded the provision confused proceedings by allowing various persons who may have possessed relevant information but had no financial stake in the outcome to participate as parties. The amendments also clarify that only an interested party is entitled to receive notice and copies of department determinations and redeterminations, and that only an interested party has standing to request a redetermination or appeal a department decision to the board.

The amendments are reasonable because each materially affected prior employer, whose account may be chargeable as a result of a claim or future claim, is designated an interested party to any proceeding that adjudicates that employer's chargeability. The department will notify an employer of proceedings regarding the circumstances of claimant's separation from employment with that employer, whether the employer paid wages to the claimant during the base period of the claim or within six weeks of the claimant's last separation from employment. The amended rule designates an employer as an interested party for proceedings related to a specific claim that involve the issue of claimant's separation from employment with that employer and for proceedings related to the employer's own tax liability.

The proposed amendments also differentiate persons who may have relevant information pertinent to an investigation or adjudication of a claim and may serve as a witness, but not qualify as an interested party.

24.11.320 HEARING PROCEDURE--BENEFIT DETERMINATIONS

(1) and (2) remain the same.

(3) With the consent of the appeals referee, the parties may stipulate in writing the facts of the case. A hearing may nevertheless be held ~~if~~ when the appeals referee finds ~~such a stipulation~~ the stipulated facts to be inadequate for decision in the case.

(4) ~~If any party fails to appear at the hearing, and no emergency justifying continuance is shown, the appeals referee issues the decisions on the best evidence available.~~ The appeals referee shall conduct the hearing within 30 days of the filing of an appeal, absent clear and convincing evidence that extraordinary circumstances justify delay. The hearing may be postponed ~~only for emergencies~~ upon a party's written or verbal application to the appeals referee ~~orally or in writing before the hearing is concluded~~. The appeals referee shall deny a request to postpone unless delay is justified by extraordinary circumstances beyond the requesting party's control.

(5) When the appeals referee does not grant a postponement and a party fails to appear at the hearing, the appeals referee shall issue the determination based upon the best available evidence.

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

AUTH: 39-51-302, MCA
IMP: 39-51-2407, MCA

REASON: The department is amending this rule to align with federal regulation (20 CFR 650), which requires the department hearings bureau to hold hearings within 30 days of the filing of an appeal of a department unemployment benefits determination or redetermination. Failure to consistently meet the federal regulation subjects the department to a possible loss of federal administrative funding and other sanctions. The amended rule will allow postponement of a hearing under extraordinary circumstances.

24.11.450A NONMONETARY DETERMINATIONS AND REDETERMINATIONS~~--NOTICE~~ (1) The department ~~investigates and adjudicates all nonmonetary issues that arise relative to claims for benefits and, on the basis of the information obtained, makes formal, written determinations and redeterminations of claimants' eligibility for benefits. In addition to the department's records, information may be obtained from the claimant, the claimant's employer(s), or any other sources. If the information obtained discloses no essential disagreement and provides a sufficient basis for a fair determination, the department investigates no further. If the information obtained from other sources differs substantially from that furnished by the claimant, the department affords the claimant the opportunity to review and respond to the information and to submit rebuttal evidence, if any. The department will consider evidence that is adverse to an interested party only after the party has been afforded an opportunity to review and respond to the evidence and to submit rebuttal evidence, if any. Notices of determination and redetermination are mailed to all interested parties, any of whom may appeal the same~~ shall adjudicate and issue formal, written determinations and redeterminations on claimant qualification and eligibility for unemployment benefits, which include the reason(s) for claimant's separation from insured work or whether claimant meets the requirements for benefit eligibility throughout the claim benefit period.

(2) ~~Nonmonetary issues fall into two categories, separation issues and nonseparation issues. Separation issues involve the circumstances under which a claimant either left or was discharged from insured work. Nonseparation issues involve the requirements claimants must meet to maintain continuing eligibility for benefits, including, but not limited to, being able to work, available for work, and actively seeking work~~ The department shall investigate, when necessary, prior to issuing a formal, written determination on claimant's qualification or eligibility for benefits.

(3) ~~When a nonmonetary redetermination request is made and the department determines that there is no basis on which to modify or reverse the prior determination, the department may transfer the request to an appeals referee, in which case the department notifies the requesting party of its action. The appeals referee will conduct a hearing and issue a decision based on the evidence in the record as well as testimony and any new evidence obtained during the hearing.~~ Interested parties shall respond to all department requests for information pertinent to an investigation within eight days of the request, unless the delay in responding was for "good cause" as defined in ARM 24.11.204. When an interested party fails to respond within eight days and in the absence of "good cause," the department shall proceed with the adjudication process.

~~(4) When the department obtains credible information that raises a nonmonetary issue relative to a claim, but there is insufficient evidence upon which to base a determination or if the claimant has not had an opportunity to respond to the information, the department notifies the claimant of the existence of the issue and of the fact that payment of benefits otherwise due will be suspended pending an initial determination relative to the issue. The claimant has eight days in which to provide information concerning the issue. If the claimant does not provide the requested information within the time allowed, the claimant is determined to be unavailable for work for failure to provide requested information, as provided in ARM 24.11.452(1)(b). The ineligibility is effective on the Sunday of the week during which the act or circumstance that forms the basis of the issue occurred or came into existence.~~

~~(a) If, within eight days of the date of the initial determination, the claimant provides information and the department determines from that information the claimant should not have been made ineligible for benefits, the ineligibility is removed. If the claimant provides that information after the eight days has elapsed, the ineligibility is ended either:~~

~~(i) as of the Saturday of the week immediately preceding the week in which the department receives the information, if the information is received on or before Tuesday of the week; or~~

~~(ii) as of the Saturday of the week during which the department receives the information, if the information is received on or after Wednesday of the week. If the department determines that the claimant had good cause for failing to provide the information within the eight days, that ineligibility is removed.~~

~~(b) If, within eight days of the date of the initial determination, the claimant provides information and the department determines from that information that the ineligibility can be ended as of a particular date, the ineligibility is ended as of the Saturday of the week in which that date occurred. If the claimant provides that information after the eight days has elapsed, the ineligibility is ended either:~~

~~(i) as of the Saturday of the week immediately preceding the week in which the department receives the information, if the information is received on or before Tuesday of the week; or~~

~~(ii) as of the Saturday of the week during which the department receives the information, if the information is received on or after Wednesday of the week. If the department determines that the claimant had good cause for failing to provide the information within the eight days, that ineligibility is ended as of the particular date~~

(4) The department shall adjudicate qualification issues in the following manner:

(a) When claim information obtained by the department provides a sufficient basis for a fair determination and discloses no essential disagreement between the claimant and employer, the department shall investigate no further and issue an initial determination of claimant's qualification for benefits.

(b) When the information relevant to the issue of qualification obtained by the department from the employer or other sources differs substantially from that furnished by the claimant, the department shall afford the claimant the opportunity to review the information, respond, and submit rebuttal evidence, if any. The department shall consider claimant's response and rebuttal evidence, if any, prior to

issuing an initial determination of claimant's qualification for benefits.

(5) ~~A claimant who wishes to requalify for benefits as provided in 39-51-2302(2)(a) or (3), 39-51-2303(1)(a) and (b), or 39-51-2304(1), MCA, must provide evidence, subject to verification by the department, that the claimant has satisfied a particular requirement for requalification. If the department determines from the evidence that the claimant has satisfied the requirement, the disqualification is ended as of the Saturday of the week in which the claimant satisfied the requirement, provided that the claim was not inactive at that time. If the claim was inactive at that time, the disqualification is ended as of the Saturday of the week immediately preceding the effective date of the reopened or additional claim that reactivated the claim.~~ The department shall adjudicate challenges to claimant's eligibility to receive benefits in the following manner:

(a) When the department obtains credible information that claimant fails to meet the requirements of benefit eligibility, the department shall investigate promptly by requesting information pertinent to the allegation(s) from claimant and other sources.

(b) The department shall afford claimant the opportunity to review the relevant information obtained by the department, respond, and submit rebuttal evidence, if any. The department shall consider claimant's response and rebuttal evidence prior to issuing a determination regarding claimant's eligibility for benefits. If claimant fails to provide the requested information within the time period designated by (3), the department may determine claimant to be unavailable for work as provided in ARM 24.11.452A.

(6) When a determination holds that a claimant is disqualified or ineligible for benefits due to an act or circumstance that occurred prior to the effective date of an initial, additional, or reopened claim, the department shall deem claimant disqualified or ineligible for benefits as of the effective date of that claim.

(7) When a determination holds that a claimant failed to meet the requirements of benefit eligibility due to an act or circumstance that occurred within the benefit period of a prior or current claim, the department may find claimant liable for repayment of benefits.

(8) The department shall notify all interested parties of the issuance of a determination by providing each a copy of the determination via U.S. mail. The department also shall provide copies of the determination by facsimile transmission and e-mail, upon request.

(9) Within ten days following the date of department mailing of a determination, an interested party may request a redetermination by submitting a request to the department, by telephone, fax, mail, or internet, together with any additional information the party wishes the department to consider. The following exceptions to the ten-day deadline to request a redetermination apply:

(a) a claimant disqualified for benefits by a department determination may submit proof of requalification at any time, pursuant to 39-51-2302, 39-51-2303, or 39-51-2304, MCA; or

(b) a claimant found ineligible for benefits by a department determination may submit proof of restored eligibility at any time, pursuant to 39-51-2104, MCA, and ARM 24.11.452A.

(10) Prior to issuance of a redetermination, the department shall provide any additional relevant information to all interested parties and invite the parties to review, respond, and submit rebuttal evidence, if any, within eight days of the department request for rebuttal. The department shall notify all interested parties of the issuance of a redetermination, per (8).

(11) An appeal of a redetermination may be filed by an interested party by submitting a request for a hearing to the department by telephone, fax, mail, or internet within ten days of the department mailing of the redetermination. The department shall notify the interested parties in writing of the appeal to the Hearings Bureau.

(12) An appeal of the decision of the Hearings Bureau may be filed by an interested party by submitting a request for the appeal to the department by telephone, fax, mail, or internet within ten days of the department mailing of the hearing officer's decision. The department shall notify the interested parties in writing of the appeal to the Board of Labor Appeals.

(13) A claimant becomes qualified or eligible to receive benefits on the Sunday immediately preceding the date upon which the department receives information that demonstrates claimant's qualification or eligibility, regardless of the time required for claim adjudication.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2202, 39-51-2203, 39-51-2205, 39-51-2301 through 39-51-2304, 39-51-2402, 39-51-2507, 39-51-2508, 39-51-2511, 39-51-2602, 39-51-3201, 39-51-3202, 39-51-3206, MCA

REASON: The department determined that a complete rewriting of this rule is reasonably necessary to clearly delineate and explain the department process used to adjudicate nonmonetary issues. Because the existing rule is excessively wordy, unnecessarily complex and, therefore, difficult to decipher, the amendments simplify and clarify with little substantive change. The amended rule will facilitate communication with interested parties by specifying that a request for a redetermination or appeal may be made by contacting the department by telephone, fax, U.S. mail, or internet. The proposed amendments also clarify that only information relevant to an issue of benefit qualification or eligibility will be shared by the department with interested parties. This amendment is necessary because the department often receives inflammatory and irrelevant information during the course of an investigation and sharing irrelevant information with interested parties serves no fact-finding interest but may cause unnecessary angst or distraction.

24.11.452A ELIGIBILITY FOR BENEFITS (1) ~~A claimant has not satisfied the requirements of 39-51-2104(1)(a), MCA, and is, therefore, ineligible for benefits if the claimant fails, without good cause, to:~~

~~(a) participate in an interview required by the department; or~~

~~(b) provide to the department, within eight days of the date of a mailed, faxed, or telephoned request, such information as the department may require for the proper administration of the claim.~~ The department shall use the following criteria

to determine whether a claimant is able, available, and actively seeking full-time or part-time work:

(a) when the majority of claimant's work weeks in the base period of the claim were full-time work, claimant must be able, available, and actively seeking suitable full-time work to be eligible for benefits, pursuant to 39-51-2104, MCA; or

(b) when the majority of claimant's work weeks in the base period of the claim were part-time work, the department may authorize claimant to be eligible for benefits, pursuant to 39-51-2115, MCA. To remain eligible, claimant must be able, available, and actively seeking suitable part-time work for at least the number of hours per week authorized by the department.

(2) ~~A~~ The department shall determine a claimant ~~is not~~ to be able to work~~, available for work, or actively seeking work, within the meaning of 39-51-2104, MCA, if~~ when the claimant is ~~incapable~~ reasonably fitted by experience, education, or training ~~of performing or is unwilling to seek, apply for, or accept~~ to perform a substantial amount of suitable work in the claimant's labor market area ~~for which the claimant is reasonably fitted by experience, education or training, in the claimant's customary occupation or in an occupation determined by the department to be suitable for the claimant under 39-51-2304, MCA~~. For the purposes of this ~~subsection~~ rule, a "substantial amount" of suitable work means full-time work, except when the department authorizes a claimant ~~is limited~~ to receive benefits while seeking ~~less than full~~ part-time work ~~due to a personal medical condition and~~ in the following circumstances:

(a) ~~the medical condition and the resultant limitation are verified by a licensed and practicing health care provider~~ the department authorized claimant for part-time work pursuant to 39-51-2115, MCA;

(b) ~~the majority of the claimant's base period wages were earned in less than full time work to which the claimant was limited due to the personal medical condition;~~ claimant has a physical or mental disability and claimant has submitted to the department an individualized determination of appropriate, less than full-time work hours, as certified and signed by a health care provider. A claimant with a certified disability may seek a reasonable modification to this rule; or

(c) ~~there exists a substantial amount of less than full-time work which is~~ the department determines that the only suitable work for the claimant in the claimant's labor market area is part-time work. ~~; and~~

~~(d) the claimant is able to work enough hours in any week at the prevailing rate of pay in the claimant's customary occupation or in an occupation determined by the department to be suitable for the claimant to enable the claimant to earn an amount equal to at least the claimant's weekly benefit amount.~~

(3) ~~A~~ The department shall determine a claimant ~~is not~~ to be available for work ~~within the meaning of 39-51-2104, MCA, if~~ when the claimant~~:~~

~~(a)~~ is ~~unwilling or unable~~ willing and able to accept an offer of ~~new~~ suitable work for ~~more than~~ a minimum of three ~~two~~ days in a benefit week if those days are normal days of work in the claimant's customary occupation. ~~or in an occupation determined by the department to be suitable for the claimant under 39-51-2304, MCA, for reasons including, but not limited to:~~

~~(i) lack of transportation;~~

~~(ii) lack of child or other dependent care;~~

~~(iii) incarceration;~~

~~(iv) vacation; or~~

~~(v) travel;~~

~~(b) leaves work within four weeks of the intended date of termination specified in a valid notice of termination, as described under ARM 24.11.454A, provided that the leaving was in response to the notice of termination or for other reasons not constituting good cause attributable to the employment, provided that the claimant is not considered to be unavailable for work after the intended date of termination solely by reason of having left work; or~~

~~(c) is available only for temporary work, unless it is determined by the department that the claimant has good cause for the restriction and there exists a substantial amount of temporary work which is suitable for the claimant in the claimant's labor market area.~~

(4) ~~A~~ The department shall determine a claimant ~~will be considered~~ to be actively seeking work ~~as required by 39-51-2104, MCA, if~~ when the claimant is:

(a) making a reasonable independent search for suitable work in a manner appropriate for conditions in the claimant's labor market area; ~~and for the claimant's customary occupation or for an occupation determined by the department to be suitable for the claimant; or~~

(b) ~~not incarcerated for more than two days in a benefit week if those days are normal work days:~~

~~(i) in the claimant's occupation; or~~

~~(ii) in a suitable occupation as determined by the department under 39-51-2304, MCA;~~

~~(c)~~ "union attached," meaning that the claimant is a member in good standing and on the out-of-work list of a labor union that operates an exclusive hiring hall; or

~~(d)~~ (c) "job attached," meaning that the claimant is able and available for full-time work and:

(i) claimant is not employed but has a definite or approximate date of hire or recall to insured work at ~~which the worker will be regularly scheduled to work~~ 30 or more hours per week; or

(ii) claimant is employed in insured work on a less than full-time basis, but has a reasonable expectation that the work will become full-time.

(5) The department shall determine a claimant to be ineligible for benefits when, without good cause, the claimant:

(a) fails to participate in a job interview required by the department;

(b) fails to provide information requested by the department for the proper administration of the claim within eight days of the date of a mailed, faxed, or telephoned request; or

(c) withdraws temporarily or permanently from the labor market. Withdrawal from the labor market includes but is not limited to:

(i) a self-imposed limitation, such as an unrealistic wage or hour restriction or refusal to travel, that curtails claimant's ability to seek or accept suitable work;

(ii) a temporarily disabling health condition that prevents claimant from being able to perform suitable work;

(iii) an employer-approved leave of absence, per [NEW RULE II]; or

(iv) failure by claimant to actively seek or accept suitable work due to family care-giving obligations, vacation, incarceration, lack of transportation, or any other reason.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2104, 39-51-2115, 39-51-2304, MCA

REASON: The department is amending this rule to further implement the provisions of the 2009 legislation. The amendments clarify that persons who are certified by a state or federal authority as disabled are entitled to an individualized evaluation of appropriate hours of work and will not be held to the standard requirements of full or part-time workers. The proposed amendments further provide that when a claimant refuses an offer of suitable work because the claimant has become ill or temporarily disabled since claimant qualified for benefits, the department will determine claimant to be ineligible to receive benefits until claimant overcomes the illness or disability and is again available for suitable work. Benefit disqualification due to illness only occurs after claimant actually has refused suitable work. When no suitable work is offered to a claimant, an ill claimant may continue to receive benefits.

The amendment is reasonably necessary to eliminate the mandatory ineligibility of persons who leave work earlier than the date set by a notice of termination. The U.S. Department of Labor analyzed this rule and found this mandatory ineligibility to be contrary to state and federal law because a claimant would be subjected to two benefit denials for the very same work separation. The amendment reasonably directs the department to investigate the facts and circumstances of all work separations following a notice of termination to determine whether a claimant left work for "good cause," regardless of whether claimant left work before the termination took effect. The proposed amendment further clarifies the distinct requirements for actively seeking work as both full and part-time workers.

24.11.454A LEAVING OR DISCHARGE FROM WORK--SUSPENSIONS

(1) ~~(a) When a worker gives a valid notice of leaving work to an employer and is discharged by the employer prior to the intended date of leaving, the worker is considered to have left work as of the intended date of leaving. The worker's discharge is considered to have been for reasons other than misconduct, provided that the discharge was solely in response to the notice of leaving or for other reasons not constituting misconduct. To be considered a valid notice of leaving, the notice must be~~ "Valid notice" means a formal, unconditional, specific ~~as to an intended date of leaving, and be communicated by the~~ communication between an individual worker and an employer or authorized agent of an employer that provides notice of the date a worker intends to leave work voluntarily (quit) or notice of the date an employer intends to terminate a worker from employment ~~individual worker to the employer or to an agent of the employer authorized to receive such notices. If the notice is not valid, the worker will not be considered to have left work, but only to have been discharged for reasons other than misconduct, provided that the discharge was solely in response to the notice of leaving or for other reasons not constituting misconduct~~.

~~(b) In those instances where a worker attempts to retract a valid notice of leaving and the employer does not accept the retraction, the worker is considered to have left work as of the intended date of leaving.~~

(2) ~~The department applies the following rules to determine the applicable date of separation from employment~~ Separation from employment occurs on the last day worked by an employee.

(3) Following a worker's notice of intent to leave work, the department shall impute the reason for the separation in the following manner:

(a) ~~When an employer gives a valid notice of termination to a worker and the worker leaves work prior to the intended date of termination, the worker is considered to have been discharged as of the intended date of discharge. If the period of time between the worker's leaving and the intended date of discharge is four weeks or less, the worker is considered to be unavailable for work during that time as provided in ARM 24.11.452A provided that the worker's leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment. If the period of time between the worker's leaving and the intended date of discharge is more than four weeks, the worker is considered to have left work as of the date of leaving, provided that the worker's leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment. To be considered a valid notice of termination, the notice must be formal, unconditional, specific as to the individual worker and as to the intended date of termination, and be communicated to the individual worker by the employer or by an agent of the employer authorized to give such notices. If the notice is not valid, the worker will not be considered to have been terminated, but only to have left work without good cause attributable to the employment, provided that the leaving was solely in response to the notice of discharge or for other reasons not constituting good cause attributable to the employment.~~ when a worker's notice of intent to leave work is valid, the department shall consider the worker to have left work voluntarily, even if the employer terminates the worker prior to the worker's intended last day as identified by the valid notice;

(b) ~~In those instances where an employer attempts to retract a valid notice of termination and the worker does not accept the retraction, the worker is considered to have been terminated as of the intended date of termination.~~ when a worker attempts to retract a valid notice of intent to leave work and the employer does not accept the retraction, the department shall consider the worker to have voluntarily left work; or

(c) when a worker's notice of intent to leave work was not valid, the department shall consider the worker to have been discharged by the employer.

~~(3)~~ (4) ~~A worker on temporary layoff who informs the employer of the worker's intention not to return to work following the temporary layoff or who simply does not return to work following the temporary layoff is considered to have left work as of the date the worker would have been recalled to work, provided that work was available in the worker's position at the time the worker would have been recalled.~~ Following an employer's notice of intent to terminate a worker, the department shall impute the reason for the separation in the following manner:

(a) when an employer's notice of termination is valid, the department shall consider the worker to have been discharged, regardless of whether the worker left work voluntarily prior to the intended date of termination;

(b) when an employer attempts to retract a valid notice of termination and the worker does not accept the retraction, the department shall consider the worker to have been discharged; or

(c) when an employer's notice of termination is not valid and the worker left solely in response to the invalid notice, the department shall consider the worker to have left work voluntarily.

~~(4)~~ (5) ~~A worker is considered to have constructively left work~~ The department shall consider a worker to have constructively quit employment in the following circumstances: ~~when the worker committed an act or omission that made it impracticable for the employer to utilize the worker's services and, for that reason, resulted in the worker's discharge, provided that the worker knew or should have known that the act or omission could jeopardize the worker's job and possibly result in discharge.~~

(a) ~~As an example, a worker has constructively quit if the worker accepts employment on specified conditions and the worker fails to meet those conditions through the worker's own fault. Such conditions may include, but are not limited to, failure to report for work due to incarceration, failing to meet license or permit requirements for employment, or failing to maintain insurability. These examples are not meant to be exclusive reasons for a constructive quit.~~ when an employer discharges a worker for an act or omission that made it impracticable for the employer to utilize the worker's services and the worker knew or should have known that the act or omission would jeopardize the worker's job and likely result in discharge; or

(b) when a worker fails to meet specified conditions of employment, which may include but are not limited to:

(i) failure to meet license or permit requirements for employment; or

(ii) failure to maintain insurability.

~~(5)~~ (6) The department shall impute the reason for separation from work of limited duration in the following manner:

(a) ~~When~~ when a worker ~~accepts work of a~~ agrees to accept employment of limited duration ~~where the duration is established~~ as specified by the employer, ~~or by a client of the employer in the case of a temporary service contractor, the worker is considered~~ the department shall consider the worker to have been laid off due to a lack of work~~, rather than to have left work,~~ at the end of the duration agreed upon~~, provided that the worker's separation was due only to the completion of the work or to the expiration of the time allotted for completion of the work.~~ and the last day worked; or

(b) ~~When~~ when an employer ~~employs~~ agrees to employ a worker for a limited duration as specified by the worker, the department shall consider the worker ~~is considered~~ to have voluntarily left work~~, rather than to have been laid off due to a lack of work, at the end of the duration specified by the worker, provided that the worker's separation was due only to the expiration of the duration specified by the worker and that there was continuing work available in the worker's position~~ only when the worker has refused an offer by the employer to continue the same work

beyond the limited duration. In the absence of a valid offer by the employer to continue the same work, the department shall consider the worker to have been laid off due to a lack of work on the last day worked.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2303, MCA

REASON: The department determined it is reasonably necessary to amend this rule and eliminate the provisions regarding suspensions. The department is proposing New Rule IV in this notice to implement Senate Bill 150 and delineate the impact of suspensions upon unemployment insurance benefit claims.

The department is further amending this rule to clarify that the department will consider a worker to have voluntarily quit when the worker is terminated from employment following delivery of the worker's valid notice of intent to leave work. The U.S. Department of Labor requested that the department clarify this rule to prevent a claimant from being the subject of two denials of benefits for a single separation (denial for quitting and denial for termination), which is contrary to Montana and federal unemployment insurance laws.

24.11.455 REFUSAL OF WORK (1) and (1)(a) remain the same.

(b) accept an offer of suitable work which the individual is physically able and mentally qualified to perform~~; or~~.

~~(c) return to customary self-employment, if any, when directed to do so by the department.~~

(2) When a claimant is authorized by the department to limit a work search to part-time work, the department may not disqualify the claimant for refusing to apply for or accept full-time work but may disqualify the claimant for refusing to apply for or accept suitable part-time work.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2115, 39-51-2304, MCA

REASON: In response to a specific request by the U.S. Department of Labor, the department is amending this rule to eliminate the implication that the department may require an individual to return to self-employment. While the department may require a claimant to apply for and accept an offer of insured work, the department lacks the authority to direct a worker to return to uninsured, self-employed status. The rule is also amended to further implement House Bill 645, by clarifying that claimants authorized to seek part-time work will not be disqualified from receiving benefits when the worker fails to seek or accept an offer of full-time work.

24.11.457 LEAVING WORK WITH OR WITHOUT GOOD CAUSE ATTRIBUTABLE TO THE EMPLOYMENT (1) ~~A~~ The department shall determine a claimant left work with good cause attributable to employment ~~if~~ when:

(a) the claimant~~:~~

~~(i)~~ had compelling reasons arising from the work environment that caused the claimant to leave; and the claimant:

~~(ii)~~ (i) attempted to correct the problem(s) in the work environment; and

~~(iii)~~ (ii) informed the employer of the problem(s) and gave the employer reasonable opportunity to correct ~~it~~ the problem(s); ~~or~~

(b) the claimant left work ~~which~~ that the department determines to be unsuitable under 39-51-2304, MCA~~.~~ , and [NEW RULE VIII]; or ~~For the purpose of this rule, work is not unsuitable if the claimant worked in that same occupation during more than six weeks from the beginning of the base period through the date of leaving. However, the mere fact that the claimant worked in an occupation during six weeks or less does not, by itself, mean that the occupation is "unsuitable".~~

(c) the claimant left work within 30 days of returning to state-approved training, in accordance with ARM 24.11.475.

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

(c) a condition underlying a workers' compensation or occupational disease claim for which liability has been accepted by a workers' compensation insurer. If the condition is one for which liability has not been accepted by the workers' compensation insurer, the department ~~will~~ shall independently evaluate the condition to determine whether the condition appears to result from the claimant's employment. If the condition appears to the satisfaction of the ~~unemployment insurance division~~ department to be work related, the department shall consider the condition ~~will be considered~~ to provide a compelling reason for ~~the purpose of this rule.~~ leaving work; ~~However, upon recovery from that condition, as certified by a licensed and practicing health care provider, the claimant must offer to return to work or be disqualified for leaving work without good cause attributable to the employment, unless there is substantial evidence concerning the nature, severity, duration, and prognosis of the illness or injury, verified by a licensed and practicing health care provider, to establish that the claimant's health would be substantially jeopardized by returning to the claimant's regular or comparable suitable work;~~ or

(d) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2302, 39-51-2304, 39-51-2307, MCA

REASON: The department is amending (1)(b) to remove the arbitrary and confusing provision that work is "not unsuitable" if a claimant worked in that occupation for six weeks during the base period. The amended rule will instead reference proposed New Rule VIII, which fully delineates the department's criteria for determining suitable work. It is reasonably necessary to further amend (1)(b) and provide a reasonable time period during which a claimant may leave work for "good cause" when enrolled in a state-approved training program. This amendment further implements Senate Bill 150 and comports with federal guidance requiring states to provide ample time for claimants to prepare for training (U.S. Department of Labor's Training, Employment and Guidance Letter 2-09, dated August 26, 2009).

The department is amending (2)(c) to delete the unreasonable requirement that a worker (injured or contracted an occupational disease on the job) must offer to return to that same job after partial or full recovery. The department concluded the requirement is unnecessary when a claimant has been released to work with a permanent partial disability. All claimants must seek suitable work, which may or

may not include a claimant's previous employment, and proposed New Rule VIII will guide the department in determining what constitutes suitable work for an injured or ill worker who is released to work by a health care provider.

24.11.458 SELF-EMPLOYMENT (1) ~~A~~ The department may determine a claimant who is engaged in self-employment ~~will not be determined~~ to be ~~ineligible~~ eligible for benefits under ~~39-51-2304~~ 39-51-2115, MCA, or ARM 24.11.452A ~~solely by reason of the claimant's time commitment to the self-employment venture provided that~~ when the claimant is able, available for, and actively seeking ~~full-time~~ suitable insured work and is willing to accept an offer of or a referral to suitable ~~full-time~~ insured work, even if ~~it would be necessary for~~ acceptance of the offer of work would require the claimant to forego all or a part of the self-employment venture ~~in order to accept the offer or referral~~.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2115, ~~39-51-2304,~~ MCA

REASON: The department is amending this rule to implement House Bill 645 and present the rule positively, rather than using a double negative, to more clearly explain the unemployment insurance division processes. Due to this change, the department is also deleting the reference to 39-51-2304, MCA, which delineates the circumstances for benefit disqualification.

24.11.475 APPROVAL OF TRAINING BY THE DEPARTMENT

~~(1) Section 39-51-2307(1), MCA, denies benefits to individuals who do not have a genuine attachment to the labor market because of their regular secondary school attendance or full time attendance at an institution of higher education in the pursuit of a bachelor's or higher degree or in a program of post graduate or post doctoral studies.~~

~~(2)~~ (1) ~~Section 39-51-2307(2), MCA, allows the~~ The department ~~to~~ may pay benefits to ~~individuals~~ a claimant engaged in ~~other types of~~ a state-approved training program ~~which as determined by the department, represent for those individuals the most reasonable and appropriate approach to reemployment in stable employment which utilizes their skills and abilities to the greatest possible degree~~.

~~(3)~~ (2) ~~Training that may be approved under this section includes~~ The department shall consider the curriculum, facilities, staff and other essentials necessary to insure that a training program has the capacity to achieve the training program's objectives, including appropriate standards and practices regarding satisfactory attendance and performance of trainees. State-approved training programs may include, but are not limited to, the following:

(a) job search workshops; ~~and~~

(b) vocational or technical training, including basic education required as a prerequisite to such training; ~~, conducted as part of a program designed to prepare individuals for gainful employment in recognized occupations and in new and emerging occupations. Short-term~~

(c) vocationally directed academic courses; ~~may also be approved.~~

~~(4) The department will approve training for any claimant under the following conditions:~~

~~(a)~~ (d) ~~The~~ job training ~~facility~~ programs authorized under the Workforce Investment Act of 1998 ~~is approved by the department and by the agency of state government authorized to approve training facilities with respect to curriculum, facilities, staff and other essentials necessary to achieve the training objective, including appropriate standards and practices as to satisfactory attendance and performance of trainees~~;

~~(b)~~ (e) ~~The~~ training programs designed to upgrade claimant's skills ~~are in need of upgrading due~~ to meet technological or other advances in the claimant's occupational field; or

(f) training programs designed to improve claimant's employability by enhancing ~~or present or impending demands for the claimant's skills are minimal or declining and are not likely to improve;~~

~~(c) The training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in any labor market area in the state in which the claimant intends to seek work;~~

~~(d) The~~ claimant's ~~has~~ aptitudes or skills for a demand occupation ~~which can be usefully supplemented by the training; and~~

~~(e) In general, the claimant's present occupational situation is one which could be improved by the training~~.

~~(5) On a week-to-week basis a trainee meeting the foregoing qualifications may continue to receive benefits until benefits are exhausted if the training facility certifies that the claimant is enrolled in and satisfactorily pursuing the training course.~~

(3) The department shall consider the following criteria when determining claimant's qualification for training benefits:

(a) claimant's basic work skills, the lack of which may be demonstrated by a history of repeated periods of unemployment;

(b) claimant's history of recent employment that paid federal or state minimum wage;

(c) claimant's lack of formal vocational training or lack of a marketable degree from an educational institution of higher learning;

(d) the diminished value of claimant's skills in the labor market due to changes in technology or major reductions in the industry in which claimant was employed;

(e) claimant's inability to work in the claimant's customary occupation due to documented, long-term physical or mental disabilities;

(f) claimant's reasonable expectation that training will result in higher wages and more secure employment; and

(g) claimant's reasonable expectation for successful completion of the training program, as demonstrated by:

(i) claimant's interest in and aptitude for the course of study to be pursued; and

(ii) claimant's willingness to commit sufficient time to ensure completion of the training.

(4) For up to 30 days prior to the start of a state-approved training program, the department shall consider a claimant to be in training after the department approves the training application, even though training may not have started.

(5) The department shall not disqualify a claimant under the provisions of 39-51-2302, MCA, when the claimant voluntarily leaves employment within 30 days of resuming participation in a state-approved training program.

(6) Upon the department's written approval of a claimant for a state-approved training program, the department shall notify the claimant of the availability of additional training benefits, pursuant to [New Rule I].

(7) The department shall not charge an experience-rated employer's account, as defined by 39-51-1214, MCA, for benefits paid to a claimant who is qualified to receive benefits under this rule.

AUTH 39-51-301, 39-51-302, MCA
IMP: 39-51-2116, 39-51-2307, 39-51-2401, MCA

REASON: It is reasonably necessary to amend this rule to further implement the 2009 legislation regarding unemployment insurance benefits for claimants enrolled and participating in state-approved training programs and to comply with the U.S. Department of Labor's Training, Employment and Guidance Letter 2-09 dated August 26, 2009. The amendments also align with proposed New Rule II which delineates a state-approved training program.

24.11.616 BENEFIT OVERPAYMENTS--CREDITING EMPLOYER ACCOUNTS (1) and (2) remain the same.

(3) ~~Effective April 1, 2001, charges~~ Charges to the accounts of governmental entities and employers electing to reimburse the fund will be credited for benefit overpayments in the same manner as experience-rated employers.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1110, MCA

24.11.1207 WAIVER OF RECOVERY OF BENEFIT OVERPAYMENTS

(1) through (1)(a)(v) remain the same.

(b) "average monthly cash flow" means six times the amount obtained by subtracting average monthly expenses from average monthly income, even if the amount is less than zero.

(c) "average monthly expenses" means the amount of all necessary and allowed expenses, converted to a monthly basis if not incurred in that manner, incurred by the claimant at the time of the claimant's request for a financial hardship waiver.

(d) "average monthly income" means the amount of all income, converted to a monthly basis if not paid in that manner, accruing to the claimant at the time of the claimant's request for a financial hardship waiver.

(e) through (f)(ii) remain the same.

(iii) groceries and household supplies for a primary residence, but not to exceed $300 per month for the claimant and $100 per month for each of the claimant's dependents that reside ~~with the claimant~~ in the claimant's household;

(iv) through (viii) remain the same.

(2) ~~Not sooner than six months following the date the~~ Upon written notice from the department that claimant ~~was given notice of the~~ received an overpayment, a claimant may submit a written request asking the department to waive recovery of ~~a~~ the benefit overpayment as provided in 39-51-3206, MCA.

(3) The department may waive recovery of all or a portion of a benefit overpayment ~~if:~~ that occurred through no fault of the claimant and involved no fraud

~~(a) the benefit overpayment is not a fraudulent benefit overpayment~~ as defined in ~~ARM 24.11.468(1);~~ ARM 24.11.1209, when one or more of the following circumstances exist:

~~(b)~~ (a) ~~it is shown to the satisfaction of the department that~~ recovery of the benefit overpayment would cause a long-term financial hardship on the claimant, as outlined in (5); ~~and~~

~~(c)~~ (b) ~~the~~ benefit overpayment ~~was not the result of a reversal, modification, or revision on appeal of an earlier determination, redetermination, or decision which allowed the payment of benefits, unless the benefit overpayment~~ was the result of ~~a~~ an incorrect monetary determination by the department ~~that was revised~~ due to minor errors in employer reporting; ~~error or clerical error on the part of the department or an agent of the department.~~

(c) benefit overpayment resulted from department failure to consider relevant written documentation provided in a timely manner by a claimant, employer, or third party prior to the department's determination or redetermination; or

(d) benefit overpayment resulted from claimant's reliance upon erroneous written information provided by department.

(4) Benefit overpayment does not constitute department error when the implementation of new state or federal law requires the department to revise a claimant's state benefit claim or monetary determination and to reduce or deny benefits retroactively.

~~(4)~~ (5) No sooner than six months after a notice of benefit overpayment, claimant may seek a financial hardship waiver by providing specific financial information to the department. The department shall determine ~~In determining~~ whether recovery of the benefit overpayment would cause a long-term financial hardship on the claimant, as provided in (3)~~(b)~~(a), using the following process: ~~the department takes into account the claimant's average household cash flow and net value of household assets.~~

(a) ~~The~~ the claimant requesting a financial hardship waiver ~~is required to~~ shall provide the department documentation of monthly household income, assets, and expenses on a form provided by the department and may be required to provide further information if needed for the department's determination. The department may require verification of any financial information provided. The department may also disallow or adjust any claimed expenses that ~~it~~ the department deems to be unreasonably excessive.

(b) ~~Recovery~~ the department shall determine recovery of the benefit overpayment ~~will be deemed~~ to cause a long-term financial hardship on the claimant ~~if~~ when the department finds:

(i) ~~that~~ the sum of the claimant's average monthly household cash flow~~;~~ and

~~(ii)~~ the net value of the claimant's household assets equals an amount less than the identified amount of the benefit overpayment ~~in question~~; and

~~(iii)~~ (ii) ~~finds~~ no evidence demonstrates that the sum of claimant's average household monthly cash flow ~~or the~~ and net value of the claimant's household assets are~~, within 12 months preceding the date of the claimant's request for waiver,~~ likely to ~~increase in an amount that would cause the sum of the two to~~ exceed the amount of the benefit overpayment within 12 months of the date of the claimant's request for waiver.

~~(5)~~ (6) After consideration of a claimant's request for waiver, the department shall ~~notifies~~ notify the claimant of ~~it's~~ the decision ~~either~~ to grant or ~~to~~ deny the request and of the claimant's right to appeal under 39-51-2402 and 39-51-2403, MCA.

~~(6)~~ (7) A claimant whose request for a financial hardship waiver has been denied ~~only by reason of the provisions of (3)(b)~~ may submit a new request for waiver ~~if~~ when ~~the~~ claimant's financial situation has significantly changed since the denied request was filed.

~~(7)~~ (8) Repayment of a benefit overpayment by offset of benefits shall continue~~s during~~ from the ~~time a~~ date claimant's written request for waiver is ~~under consideration~~ received by the department ~~and~~ until ~~a determination either allowing or denying the claimant's request for waiver, including any appeals~~ the department's decision~~,~~ becomes final. ~~If~~ When the final decision approves claimant's ~~a~~ request for waiver ~~is allowed~~, the department shall reimburse claimant ~~is reimbursed~~ for ~~any~~ repayments collected after the date the claimant's written request for waiver was received by the department.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3206, MCA

REASON: The department is amending this rule to implement Senate Bill 150 regarding waiver of benefit overpayment when the overpayment is caused by department error and clarify the waiver prerequisite that the benefit overpayment occurred through no fault of the claimant and involved no fraud. To guide the department in determining whether benefit overpayment would result in long-term financial hardship for a claimant, the department is amending this rule to require the department to project the claimant's 12-month future financial status from the date the claimant requested a waiver.

24.11.2407 DETERMINATION OF INDEPENDENT CONTACTORS – DEPARTMENT PROCEDURES (1) As provided in 39-51-204, MCA, an individual found to be an independent contractor pursuant to 39-71-417, MCA, is considered to be an independent contractor for the purposes of unemployment insurance. ~~The~~ If an individual is not required to obtain an independent contractor exemption certificate because the individual regularly and customarily performs services at his

or her own fixed business location, or if an individual is exempt from 39-71-417, MCA, by other sections of the workers' compensation act, the department shall apply the guidance set out in ARM Title 24, chapter 35, subchapters 2 and 3 and use the following two-part test to determine whether an individual is an independent contractor or an employee:

(a) and (b) remain the same.

(2) When evaluating the status of an individual who possesses an independent contractor exemption certificate, the department shall apply the two-part test in (1)(a) and (b). The department may recommend the suspension of an individual's independent contractor exemption certificate for a specific business relationship when the department determines that an employing unit exerts or retains a right of control to the degree that the certificate holder fails to qualify for independent contractor designation. The department may recommend certificate revocation when the department determines the certificate holder has violated the provisions of 39-71-418, MCA.

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

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-204, 39-51-1109, 39-51-2402, 39-71-418, MCA

REASON: The department is amending this rule to implement and clarify 39-51-204, MCA, regarding unemployment insurance benefits for independent contractors. It is reasonably necessary to amend this rule and clarify that when an individual is exempt from the Workers' Compensation Act (Act) by the terms of the Act itself, the unemployment insurance division shall use the common law test set forth in (1) to determine employment status. The amendments will provide clear guidance to unemployment insurance auditors evaluating workers' employment status to ensure consistency and accuracy in administering the unemployment insurance programs, including recommendation of suspension or revocation of an independent contractor exemption certificate.

24.11.2511 PAYMENTS THAT ARE NOT WAGES--EMPLOYEE EXPENSES (1) through (1)(e)(ii) remain the same.

(iii) for drivers ~~utilized or~~ employed by a motor carrier with intrastate operating authority, meal and lodging expenses may be reimbursed by either of the methods provided in ~~subsection~~ (1)(e)(i) or (ii) for each calendar day the driver is on travel status;

(iv) for drivers ~~utilized or~~ employed by a motor carrier with interstate operating authority, meal and lodging expenses may be reimbursed by the methods provided in ~~subsection~~ (1)(e)(i) or (ii), or by a flat rate not to exceed ~~$30.00~~ the average of in-state and out-of state meal allowances plus nonreceipted lodging under 2-18-501, MCA, for each calendar day the driver is on travel status; or

(v) remains the same.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The proposed amendment is necessary to respond to suggestions by members of the trucking industry to more accurately reflect the current meal and lodging reimbursements paid to truckers operating in Montana, Canada, and the continental United States.

24.11.2515 PAYMENTS THAT ARE NOT WAGES--JUROR FEES, INSURANCE PREMIUMS, ANNUITIES, DIRECTOR AND PARTNERSHIP FEES

(1) through (5) remain the same.

(6) The department shall consider payments made by an employer to an employee who is called to active duty in the military services for more than 30 days, when the payments represent a replacement of part or all of the wages the employee would have received for performing services for the employer, to be military differential pay and not wages for purposes of Title 39, chapter 51, MCA.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-1103, MCA

REASON: The department is amending this rule to address situations where some employers supplement the wages of employees on active duty by paying the difference between the military pay or wages and the employee's prior civilian wage or a higher wage amount to ensure the employee and his/her family do not suffer financial hardship during the employee's active duty service. While receiving such payments, the employee is not performing a service for the employer and therefore, the payments do not meet the statutory definition of wages. The department proposes this amendment to clarify the nonwage status of payments to active duty military personnel, which currently occurs with some frequency in Montana due to the increased active-duty assignment of National Guard members.

5. The proposed new rules provide as follows:

NEW RULE I SUBSTITUTE BOARD MEMBER (1) In matters when one of the three board members is unable to attend and participate in proceedings and decisions of a regularly scheduled Board of Labor Appeals meeting, the substitute board member may serve in that board member's place for the entire board meeting as authorized by 2-15-1704, MCA.

(2) The substitute board member may not serve in matters when one of the three board members is unable to participate in a proceeding and decision of a specific appeal due to a conflict of interest and in these matters two members is a majority of the membership to constitute a quorum to do business and a favorable vote by the majority is required to adopt any resolution, motion, or other decision as provided by 2-15-124, MCA. If the two members are unable to reach a favorable vote, the most recently issued decision will stand pursuant to 39-51-2405, MCA.

AUTH: 2-4-201, MCA
IMP: 2-15-124, 2-15-1704, 39-51-301, 39-51-2405, MCA

REASON: The board is adopting this new rule to further implement SB 150 and differentiate between a substitute board member's participation in a board meeting versus in a specific appeal case. This new rule also clarifies that when a board member recuses himself or herself from a specific appeal, two members will still constitute a majority, and that a third (substitute board member) must decide cases where two board members have a split decision.

NEW RULE II ADDITIONAL TRAINING BENEFITS (1) "Additional training benefits" are unemployment benefits paid to a claimant who meets the criteria set forth by 39-51-2116, MCA, and is enrolled in a state-approved training program. Additional training benefits become available after claimant has exhausted all regular training benefits approved under ARM 24.11.475.

(2) "State-approved training program" means a program the department determines is reasonably expected to lead to employment for a claimant, as defined by ARM 24.11.475.

(3) The department shall notify claimants of the availability of additional training benefits at the time the department approves claimants' initial unemployment benefits and regular training benefit under ARM 24.11.475. The department encourages claimants to apply to the department for additional training benefits as soon as possible during claimants' benefit year.

(4) To qualify for additional training benefits, claimant must be enrolled in a state-approved training program prior to the end of the benefit year established by the claimant's valid unemployment claim, as defined in ARM 24.11.440. After the department approves claimant's additional training application, claimant may be considered "in training" for up to 30 days before the start of actual training.

(5) To receive additional training benefits, claimant must remain in good standing with the state-approved training program. The department may require reasonable evidence of claimant's satisfactory training progress, such as reports from training providers and evidence of attendance at training sessions.

(6) The department shall pay additional training benefits for each week that claimant attends training, which include:

(a) breaks within training schedule of less than 30 days; and

(b) partial weeks consisting of at least one day but less than five days of training in one week.

(7) Additional training benefits may not exceed an amount equal to 26 times the claimant's regular weekly benefit amount.

(8) Additional training benefits terminate when the following occurs:

(a) claimant completes the training program;

(b) claimant exhausts the maximum additional training benefits payable;

(c) claimant leaves or is expelled from the training program; or

(d) claimant becomes eligible to file a new, regular unemployment benefits claim at the end of the benefit year.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2116, MCA

REASON: The department is proposing New Rule II to implement House Bill 645. The U.S. Department of Labor authorized states to pay additional unemployment benefits to individuals who participate in state-approved training programs and have exhausted their state-funded unemployment insurance benefits. To distinguish these additional benefits from regular unemployment insurance benefits paid during training, this new rule defines and applies the term "additional training benefits." The proposed rule reasonably requires the department to notify all individuals of the availability of training benefits at the time the initial unemployment benefit claim is approved and again when regular training benefits are approved, pursuant to ARM 24.11.475. This new rule also incorporates the limitation set by federal law on the total additional training benefits an individual may receive, which may not exceed 26 times the amount of a claimant's regular weekly unemployment benefit.

The proposed rule reasonably allows a claimant who has applied for and been accepted in a training program to receive training benefits for up to 30 days prior to the start of the program to help support claimants preparing for training, which may involve relocation. Similarly, this new rule allow claimants to collect additional training benefits during breaks in the training schedule of less than 30 days, so short holiday or mid-term breaks will not interrupt receipt of benefits, but longer breaks such as summer vacation will not be supported by additional training benefits. This rule also clarifies that a claimant will qualify for training benefits for a partial week of ongoing training that includes at least one day of formal training. These specific provisions are reasonable and necessary to streamline administrative oversight and support claimants throughout the training process without undue financial stress.

NEW RULE III LEAVE OF ABSENCE (1) A worker is not eligible for benefits while on an employer-approved leave of absence until the leave of absence ends or the worker offers to return to work, whichever occurs first.

(2) When a separation from employment occurs during an employer-approved leave of absence or after the agreed return date, the department shall determine the reasons for the separation based on evidence provided by the claimant, the employer, and other sources. The department's determination dictates whether an otherwise qualified claimant is eligible for benefits.

(3) When a worker does not return to work upon the agreed return date, the department shall determine whether the claimant voluntarily left work or was discharged from employment. If discharged from employment, the department shall determine whether the discharge occurred for misconduct.

(4) When a worker returns to work upon the agreed return date or offers to return to work during an employer-approved leave of absence, whichever occurs first, and finds suitable work is not available, the department shall determine whether the claimant is eligible for benefits due to a temporary or permanent lay-off.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2112, MCA

REASON: Proposed New Rule III is reasonably necessary to implement Senate Bill 150 by clarifying that an individual on an employer-approved leave of absence from

work is not eligible for unemployment benefits during the leave of absence period. This new rule further provides that if an individual offers to return to work – before or after the agreed date of return – the individual becomes eligible for benefits if the employer does not accept the offer of return.

NEW RULE IV SUSPENSION (1) A worker is ineligible for benefits during the first two weeks of an unpaid suspension or until the unpaid suspension ends, whichever occurs first. The department shall consider a worker who receives a regular rate of pay during a suspension to be employed.

(2) When an unpaid suspension remains in effect for two weeks, the department shall consider the employer to have discharged the worker.

(3) The department shall determine whether the employer discharged the claimant for misconduct based on evidence provided by the employer, the claimant, and other sources. When the department determines claimant was discharged for reasons other than misconduct, an otherwise qualified individual is eligible for benefits.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2113, 39-51-2202, 39-51-2402, MCA

REASON: New Rule IV is reasonable and necessary to implement Senate Bill 150 and effectuate the two week statutory limitation on benefit ineligibility for individuals on unpaid suspension. This new rule addresses the recurrent practice of some employers to place employees on unpaid suspensions for indefinite periods of time by establishing a two-week time limit for an employer to resolve a suspension and clarifying when the department will consider workers to have been discharged.

NEW RULE V CONFIDENTIAL INFORMATION (1) Pursuant to the requirements of 20 CFR Part 603, the department shall protect personally identifying information of claimants and employers. Personally identifying information is data that reveals or that could foreseeably be combined with other publicly available information to reveal the name or an identifying particular about an individual, employer, or employing unit.

(2) The department shall bar the disclosure of personally identifying information, except as disclosure is permitted by the informed consent of the identified individual(s) or is required under federal or state law to a public official for use in the performance of official duties or pursuant to a valid subpoena or interagency cooperative agreement.

(3) For the purposes of this rule:

(a) "public official" means an official, agency, or public entity within the executive branch of federal, state, or local government with responsibility for administering or enforcing the law;

(b) "performance of official duties" means the administration or enforcement of law or the execution of the official responsibilities of a federal, state, or local elected official, and includes research related to unemployment insurance law administered by the Legislature or other public officials;

(c) "valid subpoena" means a compulsory legal process by a federal, state, or local official, other than a clerk of court on behalf of a litigant, with authority to obtain personally identifying unemployment insurance information by subpoena under federal or state law; and

(d) "interagency cooperative agreement" means a written data-sharing agreement between the department and a public official.

(4) The department shall require a recipient of personally identifying information to execute a confidentiality agreement with the department to ensure appropriate safeguards against disclosure are maintained, as specified in state and federal law. The department shall require a public official who receives personally identifying information to safeguard the information from redisclosure, unless redisclosure is specifically authorized in writing by the department.

(5) The department shall charge for the cost of any disclosure to a third party other than an "interested party" pursuant to ARM 24.11.207. Costs must be paid in full prior to the release of information. When the disclosure consists of no more than two pages of hard copy information and involves no more than one-half hour of staff time, the department shall make no charge.

(6) Any unauthorized release of protected information will be prosecuted by the department, pursuant to 39-51-603, MCA.

AUTH: 39-51-301, 39-51-302, 39-51-603, MCA
IMP: 39-51-501, 39-51-603, MCA

REASON: The department is proposing New Rule V to implement Senate Bill 150 which requires that the department adopt rules providing for confidentiality of unemployment insurance information in compliance with the U.S. Department of Labor's (USDOL) directive that states adopt more stringent standards for the release of confidential information to authorized parties. The USDOL regulation (20 CFR 603) requires state unemployment insurance agencies to be reimbursed for time spent in retrieving and delivering confidential information to an authorized party.

NEW RULE VI CLAIMANT AGENT DESIGNATION (1) A claimant may designate another person to serve as claimant's agent to communicate with the department on the claimant's behalf. Claimant shall notify the department of the level of authority conferred by claimant on the agent:

(a) Level 1 designation allows the agent to provide information to the department related to the claim for benefits. Agent may respond to department requests for information by telephone or in writing. Agent may request a redetermination or appeal on claimant's behalf;

(b) Level 2 designation allows the agent to file a new claim, reactivate an inactive claim, or file continued claim certifications on the claimant's behalf. Claimant must provide the agent with claimant's Personal Identification Number to allow the agent to access claimant's account; or

(c) Level 3 designation grants the agent authority to act on claimant's behalf as outlined by both (a) and (b).

(2) Before an agent may act on a claimant's behalf, the claimant must complete, sign, and return the agent designation form to the department. The agent

designation form specifies the limits of the agent's authority and the time period covered by the designation.

(3) Any action taken or information provided by the agent has the same effect as an action taken or information provided by the claimant.

(4) Claimant may revoke or renew agent designation or alter the level of authorization at any time by notifying the department in writing. Agent designation expires after one year or when a new claim is filed, whichever occurs first.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-3201, MCA

REASON: New Rule VI is reasonably necessary to implement Senate Bill 150 which authorized a claimant to designate another person as an agent and represent the claimant in matters concerning the administration of claimant's unemployment insurance benefits. This new rule delineates three levels of agent representation to allow a claimant discretion in granting authority to an agent. This new rule also limits the maximum duration of an agent designation to one year and authorizes revocation, renewal, or redesignation of an agent by the claimant.

NEW RULE VII CUSTOMARY HOURS (1) The department shall determine the customary hours of work per week for each claimant during the base period of the claim. Customary hours may be established by:

(a) contractual agreement between the employer and the claimant;

(b) verbal or written statement by the employer to the claimant at the time of hire or as modified by the employer during the period of employment; or

(c) a department determination according to the following calculations:

(i) for claimants willing or required to seek and accept full-time work, the department shall add the hours worked during each week of work in the base period for all employers and divide by the number of weeks of work in the base period;

(ii) for claimants authorized to seek part-time work, the department shall add the hours worked during each week of part-time work in the base period for all employers and divide by the number of weeks of part-time work in the base period; and

(iii) when the computation results in a fraction or portion of a whole number, the department shall round down the result to the lower whole number to determine claimant's customary hours of work.

(2) When a claimant files for a week of benefits and reports hours of work equal to or greater than claimant's customary hours, the department shall determine that no unemployment exists and pay no benefits for the week.

(3) Failure to accurately report hours and gross wages of insured work may subject the claimant to the penalties of Title 39, chapter 51, part 32, MCA.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-2101, 39-51-2115, MCA

REASON: New Rule VII is necessary to implement Senate Bill 150 and address a U.S. Department of Labor (USDOL) directive that distinguishes individuals who

experience unemployment and who may qualify for unemployment benefits, from those having only wage loss who would not qualify.

NEW RULE VIII SUITABLE WORK (1) Claimant shall make a good faith effort to apply for suitable work and shall accept an offer of suitable work. The department shall determine what constitutes suitable work for the claimant and shall expand the definition of suitable work as the period of claimant's unemployment increases.

(2) The department shall allow claimant reasonable time to seek claimant's customary occupation or comparable work to preserve claimant's highest use of skills and earning potential. One-half of the period of claimant's benefit entitlement constitutes a reasonable time.

(3) To determine whether employment constitutes suitable work, the department shall consider factors including but not limited to:

(a) prospects for reemployment in claimant's customary occupation or comparable work;

(b) claimant's prior earnings and length of claimant's current unemployment:

(i) during the first half of the benefit entitlement period, work is suitable when it pays the prevailing wage in the locality for claimant's customary occupation or comparable work;

(ii) during the second half of the benefit entitlement period, work is suitable when it pays 75% of claimant's earnings in prior insured work in claimant's customary occupation; or

(iii) work is not suitable when the offered wage is substantially less favorable to the claimant than the prevailing wage for similar work in the locality;

(c) claimant's prior work experience, training, education, and occupational licensure:

(i) work in related occupations becomes suitable when claimant has no realistic expectation of obtaining employment in an occupation that utilizes claimant's highest skill level; and

(ii) during the second half of the benefit entitlement period, suitable work may be in any occupation that claimant worked during the base period or any work claimant can reasonably perform consistent with claimant's past experience, training, and skills;

(d) degree of risk to the claimant's health and safety:

(i) work is not suitable if it presents a risk to claimant's physical or mental health that is greater than the usual risks associated with claimant's customary occupation; or

(ii) work is not suitable if claimant would be required to perform tasks that would cause or substantially aggravate claimant's health problems;

(e) claimant's physical fitness and ability to perform work:

(i) claimant must be able to perform suitable work; and

(ii) work beyond claimant's capacity to perform is not suitable;

(f) working conditions:

(i) work is not suitable that does not pay at least the state or federal minimum wage;

(ii) work is not suitable when the provisions of an employment agreement or physical conditions of work are substantially less favorable than those of similar work in the locality;

(iii) suitable work corresponds with the customary hours of work for similar work in the locality or the hours worked by claimant worked during the base period;

(iv) claimant's convenience or preference for certain work hours does not make otherwise suitable work not suitable;

(v) work may not be suitable when fringe benefits offered, including group health insurance, life insurance, paid personal time off, retirement plans, or severance pay are substantially less favorable than benefits received by claimant during the base period or substantially less than fringe benefits provided for similar work in the locality, whichever is lower;

(vi) work is not suitable when working conditions violate any state or federal law, or the job opening is due to a strike, lockout, or labor dispute; or

(vii) work is not suitable when, as a condition of being employed, claimant is required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(g) part-time work:

(i) when the department has authorized claimant to seek part-time work pursuant to 39-51-2115, MCA, part-time work at the hours authorized by the department may be suitable; or

(ii) when claimant has no recent history of part-time work, such work may be suitable when claimant has been unemployed for an extended period and has no immediate prospect of full-time work;

(h) religious or moral convictions:

(i) claimant may raise a conscientious objection to the department when otherwise suitable work conflicts with a sincerely held religious or moral conviction; and

(ii) claimant bears the burden to show that a conscientious objection to otherwise suitable work is held in good faith; or

(i) distance of available work from the claimant's residence.

(4) Work that was once suitable for claimant may become unsuitable due to circumstances beyond the claimant's or employer's control. The department shall consider previously suitable work as not suitable when:

(a) claimant has made a good faith effort to comply with licensing requirements or governing regulations but has failed to pass the required course(s) or licensing exam;

(b) claimant is unable to meet certain occupational requirements due to claimant's physical or mental condition; or

(c) employer has unreasonably altered hours, terms of employment, working conditions, or claimant's wage by reducing the wage by 20% or more, as described by ARM 24.11.457.

(5) Claimant may appeal a department determination of suitable work pursuant to 39-51-2402 and 39-51-2403, MCA. Claimant bears the burden of proof that work is not suitable.

AUTH: 39-51-301, 39-51-302, MCA

IMP: 39-51-2101, 39-51-2112, 39-51-2115, 39-51-2304, MCA

REASON: The department is proposing New Rule VIII to implement Senate Bill 150 and clearly delineate what qualifies as suitable work, which is a primary component in the department's determination of a claimant's continuing eligibility for benefits during a claim period. The department has historically relied upon the U.S. Department of Labor's technical papers for guidance in adjudicating suitable work determinations, but concluded that New Rule VIII will provide a more comprehensive definition of suitable work and set forth the criteria for adjudicating continuing benefit eligibility in a more accessible format than the technical papers.

NEW RULE IX REASONABLE WAGES (1) A business filing income taxes as a corporation shall accurately report compensation for services performed by a corporate officer, LLC member, or shareholder employee as wages for the purpose of unemployment insurance taxation.

(2) The department shall use the following factors to evaluate whether reasonable compensation for services performed by a corporate officer, LLC member, or shareholder employee has been reported to the department as wages:

(a) qualifications and business role of corporate officer, LLC member, or shareholder employee, including but not limited to:

(i) the amount of time devoted to the business;

(ii) position and responsibility within the business; and

(iii) duties performed for business;

(b) compensation paid to other similarly situated employees of the business and the business entity's wage policy;

(c) a review of the State Occupational Employment and Wage Estimates for the pertinent occupation; and

(d) nature, size, and location of business, including:

(i) complexity of the business;

(ii) financial condition of the business including, but not limited to, the relationship of the compensation to gross and net business income, cash flows, total sales or revenues, and net income adjusted for non cash items such as depreciation, depletion, and amortization; and

(iii) cost of living and general economic conditions in the business's locale.

(3) The department shall calculate the actual remuneration received by a corporate officer, LLC member, or shareholder employee by examining payments including, but not limited to, the following:

(a) direct payments by check, electronic transfer, or cash;

(b) payments to any family member who did not perform services for the payment;

(c) payments classified as gifts, distributions of profit, dividends, owner draws or contributions, and return of capital;

(d) distribution of property or services paid for by the corporation;

(e) payments for personal expenses including, but not limited to direct payments for personal debts, payments of credit card bills that include personal purchases, and use of company vehicles for personal use;

(f) payments classified as loans for which there is no evidence of a repayment schedule or the payment schedule does not impose a reasonable interest rate;

(g) payments for rent in excess of market value; and

(h) the market value of any remuneration paid in any medium other than cash.

(4) The department shall compare the reported wages to actual remuneration received by a corporate officer, LLC member, or shareholder employee and consider the factors enumerated by (2) to determine a reasonable compensation for services performed.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-201, 39-51-203, 39-51-602, 39-51-603, 39-51-1103, 39-51-1108, MCA

REASON: The department is proposing New Rule IX to address the unrealistically low wages declared by some corporations and limited liability companies for corporate officers, shareholder employees, and LLC members for the purpose of unemployment insurance taxation. The department has discovered that some corporate officers and shareholder employees enjoy actual financial compensation considerably in excess of declared wages. Specifying the criteria for a more accurate determination of wages in New Rule IX will help to ensure that corporate entities pay a fair share of unemployment taxes and that unemployment benefits of officers, shareholder employees, and LLC members are based on accurate reporting of remuneration.

NEW RULE X REACTIVATED EMPLOYER RATES (1) The department shall reactivate the unemployment insurance account of an employer who begins employing workers within five years from the last date of employment. The department shall assign the employer a contributions rate by taking into account the employer's prior experience rated record.

(a) The department shall assign the lowest deficit contribution rate in effect for the current rate year to a deficit employer who has reported no wages during the three federal fiscal years immediately prior to the rate computation date.

(b) The department shall assign the new employer contribution rate in effect for the current rate year based on the employer's industrial classification to an eligible employer who has reported no wages in the three federal fiscal years immediately prior to the rate computation date.

AUTH: 39-51-301, 39-51-302, MCA
IMP: 39-51-1121, 39-51-1206, 39-51-1216, MCA

REASON: The department is proposing New Rule X to implement the provisions of Senate Bill 150 regarding the reactivation of employer accounts when the employer is inactive for less than five years and the assignment of employer contribution rates.

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

submitted to: Don Gilbert, Unemployment Insurance Division, Department of Labor and Industry, P.O. Box 8020, Helena, Montana 59624-8020; telephone (406) 444-4336; fax (406) 444-2993; TDD (406) 444-5549; or e-mail at dgilbert@mt.gov and must be received no later than 5:00 p.m., March 24, 2011.

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

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Department of Labor and Industry administrative rulemaking proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The proposed rule amendments and proposed new rules implement the provisions of HB 645 and SB 150, enacted by the 2009 Montana Legislature.

The primary sponsor of HB 645, Representative John Sesso, was first contacted by e-mail by the department on June 16, 2009, and notified of the department's intent to begin work on these rules. On June 26, 2009, Don Gilbert of the Unemployment Insurance Division mailed a letter to Representative Sesso and notified him that the department had begun the rule drafting process. On August 3, 2009, Mr. Gilbert contacted Representative Sesso by telephone and left a voice message inviting Representative Sesso to comment upon the proposed rules. The department has received no comments on the proposed rule amendments or proposed new rules from Representative Sesso as of the date of this notice.

The primary sponsor of SB 150, Senator John Bruggeman, was notified of the department's intent to begin work on these rules by telephone on August 3 and August 8, 2009, by Don Gilbert. Senator Bruggeman was invited by Mr. Gilbert to offer comments or suggestions concerning the drafting of the rules to implement to provisions of SB 150. As of the date of this notice, Senator Bruggeman has offered

no comments or suggestions regarding the proposed rule amendments and proposed new rules.

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

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

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

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

/s/ NORMAN GROSFIELD
Norman Grosfield, Acting Chair
Board of Labor Appeals

Certified to the Secretary of State February 14, 2011.

BEFORE THE DEPARTMENT OF AGRICULTURE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 4.12.3503 and 4.12.3504 relating to certified seed potatoes	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 23, 2010 the Department of Agriculture published MAR Notice No. 4-14-200 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2867 of the 2010 Montana Administrative Register, Issue Number 24.

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

3. No comments or testimony were received.

/s/ Cort Jensen
Cort Jensen
Rule Reviewer

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

Certified to the Secretary of State February 8, 2011.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.80.201, 17.80.202, and 17.80.203 and the adoption of New Rules I through IV pertaining to certification of certain energy production or development facilities or equipment for property tax classification or abatement, monitoring of compliance with certification criteria, and revocation of certification	))))))))	NOTICE OF AMENDMENT AND ADOPTION (TAX CERTIFICATION - POLLUTION CONTROL EQUIPMENT, AND ENERGY FACILITIES)

TO: All Concerned Persons

1. On December 23, 2010, the Department of Environmental Quality published MAR Notice No. 17-312 regarding a notice of proposed amendment and adoption of the above-stated rules at page 2886, 2010 Montana Administrative Register, issue number 24.

2. The department has amended ARM 17.80.201, 17.80.202, and 17.80.203 and adopted New Rules I (17.80.204), II (17.80.205), III (17.80.206), and IV (17.80.225) exactly as proposed.

3. No public comments or testimony were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

/s/ David Rusoff
DAVID RUSOFF
Rule Reviewer

By: */s/ Richard H. Opper*
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, February 14, 2011.

BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 17.53.706, 17.56.502, 17.56.505, and 17.56.506 pertaining to emergency preparedness, prevention, and response at transfer facilities, reporting of suspected releases, reporting and cleanup of spills and overfills, and reporting of confirmed releases	)	NOTICE OF AMENDMENT (HAZARDOUS WASTE AND UNDERGROUND STORAGE TANKS)

TO: All Concerned Persons

1. On January 13, 2011, the Department of Environmental Quality published MAR Notice No. 17-315 regarding a notice of proposed amendment of the above-stated rules at page 25, 2011 Montana Administrative Register, issue number 1.

2. The department has amended the rules exactly as proposed.

3. No public comments or testimony were received.

Reviewed by:

DEPARTMENT OF ENVIRONMENTAL QUALITY

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

By: */s/ Richard H. Opper*
RICHARD H. OPPER, DIRECTOR

Certified to the Secretary of State, February 14, 2011.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II pertaining to a day reporting program	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 13, 2011 the Department of Corrections published MAR Notice No. 20-7-45 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 29 of the 2011 Montana Administrative Register, Issue Number 1.

2. The department has adopted the above-stated rules as proposed: New Rule I (20.7.601), and II (20.7.602).

3. No comments or testimony were received.

/s/ Diana Koch	/s/ Mike Ferriter
Diana Koch	Mike Ferriter
Rule Reviewer	Director
	Department of Corrections

Certified to the Secretary of State February 14, 2011.

BEFORE THE DEPARTMENT OF CORRECTIONS
OF THE STATE OF MONTANA

In the matter of the adoption of New Rules I and II pertaining to the satellite-based monitoring program	)))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 13, 2011 the Department of Corrections published MAR Notice No. 20-7-46 pertaining to the public hearing on the proposed adoption of the above-stated rules at page 33 of the 2011 Montana Administrative Register, Issue Number 1.

2. The department has adopted the above-stated rules as proposed: New Rule I (20.7.401), and II (20.7.402).

3. No comments or testimony were received.

/s/ Diana Koch	/s/ Mike Ferriter
Diana Koch	Mike Ferriter
Rule Reviewer	Director
	Department of Corrections

Certified to the Secretary of State February 14, 2011.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW RULES I through XIII, pertaining to approved construction techniques for fire mitigation	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On April 29, 2010, the Department of Labor and Industry (department) published MAR notice no. 24-320-245 regarding the public hearing on the proposed adoption of the above-stated rules, at page 980 of the 2010 Montana Administrative Register, issue no. 8.

2. On May 24, 2010, a public hearing was held on the proposed adoption of the above-stated rules in Helena. Several comments were received by the June 1, 2010, deadline.

3. On September 9, 2010, an amended notice and extension of comment period was published at page 1966 of the 2010 Montana Administrative Register, issue no. 17. Several comments were received by the October 8, 2010, deadline.

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

COMMENT 1: One commenter stated that the proposed rules address only wildfire and wildfire hazards, and questioned whether future rulemaking will address all natural and man-caused hazards per 76-3-504(e) [sic], MCA.

RESPONSE 1: The department only has the authority under Title 50, chapter 60, part 9, "Fire Mitigation Construction Techniques," to "adopt rules identifying appropriate construction techniques that may be used by a local government in mitigation of identified fire hazards pursuant to 76-3-504(1)(e), MCA," and lacks any authority to address all natural and man-caused hazards.

COMMENT 2: One commenter noted that Senate Bill 51 required the Department of Natural Resources and Conservation (DNRC) to write best practices for subdivision development, and the proposed rules are the companion side for the building construction.

RESPONSE 2: The department acknowledges that Senate Bill 51 amended 76-13-109, MCA, to direct the DNRC to adopt, among other rules, rules addressing development within the Wildland-Urban Interface. See 76-13-109(2)(a) through (c), MCA.

COMMENT 3: One commenter questioned the enforceability of these rules, noting that even if a county adopts these requirements, the rules can only be enforced as

subdivision covenant language, which the commenter believes would still render the construction requirements unenforceable.

RESPONSE 3: The department notes that 50-60-902, MCA, provides: "Rules promulgated under 50-60-901, MCA, may be enforced only as provided in Title 76, chapter 3, part 5 [subdivision regulations]. The powers and duties for enforcement provided in 76-3-501, MCA, apply to rules adopted under 50-60-901, MCA, and do not apply to or include any rules adopted under Title 50, chapter 60, parts 1 through 8."

COMMENT 4: A commenter noted that the rules fail to address fire sprinklers inside a structure or on the roof, and opined that fire sprinklers on the interior of structures mitigate fire inside, and potentially eliminates fire spreading to wildland fuels.

RESPONSE 4: The department's responsibility for these rules is to propose best practices regarding construction techniques for fire mitigation. Section 50-60-203, MCA, specifically provides that these techniques may not be construed to be part of the state building code. Fire sprinklers are a part of the state building code and, as such, are not a part of these rules.

COMMENT 5: One commenter opposed the passage of Senate Bill 51 and all of the proposed new rules.

RESPONSE 5: The 2007 Montana Legislature enacted Senate Bill 51 and the department is required to comply with its rulemaking mandates.

COMMENT 6: One commenter opined that Ravalli County residents won the right to vote on zoning and these rules constitute zoning.

RESPONSE 6: The department appreciates all comments received in the rulemaking process.

COMMENT 7: One commenter stated that Montana's fire chiefs were directed to map the state under the guise of safety, and turned out a map to zone out what they claimed to be "high risk" lands, but which actually covers all land from the valley floor to the forest. The commenter further opined that each county commissioner will be able to use the map to stop growth, stop subdivisions, and stop home construction.

RESPONSE 7: The department appreciates all comments received in the rulemaking process.

COMMENT 8: One commenter stated that the zoning and land use designations set forth in the proposed rules devalue Montanan's land holdings, are an illegal "taking," and devalue land by billions of dollars.

RESPONSE 8: The department appreciates all comments received in the rulemaking process.

COMMENT 9: One commenter supported changing the term "rule" in the statement of reasonable necessity to "best practices," because of the financial burden the proposed building codes will have.

RESPONSE 9: The department appreciates all comments received in the rulemaking process. See response 12.

COMMENT 10: A commenter supported changing the reasonable necessity statement to "standard practice" to allow local code officials to have more control of the building process.

RESPONSE 10: The department appreciates all comments received in the rulemaking process. See response 12.

COMMENT 11: One commenter requested changing the WUI language so that the state does not institute building codes, but keeps or maintains recommendations for best practices with no regulatory power.

RESPONSE 11: The department has purposefully avoided instituting a building code in the proposed rules, and has instead proposed language that sets forth best practices concerning construction techniques. As proposed, the rules do not extend regulatory power to the Building Codes Bureau and do not constitute any part of the state building codes. The enforcement of these rules is provided by statute at 50-60-902, MCA, which cannot be changed by administrative rulemaking.

COMMENT 12: One commenter disagrees with changing the reasonable necessity statement to include "best practices," stating that it is too vague and has potential for discriminatory application.

RESPONSE 12: The term "best practices," as it appears in the statement of reasonable necessity, is intended to clarify that the techniques recommended in the rule are not enforceable as building codes, but rather as "techniques" or "best practices," from which a local government may select and enforce. This approach is set forth in the statute and cannot be changed by administrative rulemaking.

Comments 13 through 16 address New Rule I:

COMMENT 13: Two commenters stated that the definition of "Wildland-Urban Interface" (WUI) in New Rule I should be the same as in the statute. The commenter opined that the definition seems broader than the statutory definition, and expressed concern that it would apply to the entire county, instead of just the areas defined by locally adopted wildland fire protection plans.

RESPONSE 13: Since the proposed definition is similar to the definition in 76-13-102(16), MCA, and because consistency in this definition may be desirable to avoid the suggestion that the definitions have substantive difference, the department is amending New Rule I to be consistent with 76-13-102(16), MCA.

COMMENT 14: One commenter stated that the subdivision regulations, which appear to be the enforcement mechanism for New Rule I, are not the legal or appropriate place for a local government to enforce building codes. The commenter supports the department's clearly defining the difference between Montana's building code and the applicability of "approved construction techniques" for wildfire mitigation. The commenter also noted that Senate Bill 51 created a very difficult situation for the department in that it did not give the department authority to enforce the rules, nor did it require that the rules be site specific.

RESPONSE 14: The department appreciates all comments received in the rulemaking process.

COMMENT 15: A commenter recommended additional, stronger definitions in New Rule I to provide uniform application and enforcement predictability. The commenter recommended that the department add language that unless a definition is specifically identified in the rule, the definition found in the International Code Council Codes will apply, e.g., International Wildland-Urban Interface Code 2009 – (IWUIC); International Building Code 2009 – (IBC); or International Residential Code 2009 – (IRC).

RESPONSE 15: The department defined all necessary terms, and without more specific examples, is unable to respond to the comment to increase the number and strength of the proposed definitions.

The department recognizes the validity of the definitions contained in the above-mentioned codes, but asserts that the application of such definitions is limited only to those codes in which they appear, and referencing them would cause confusion that the department is attempting to create a building code, as distinguished from best practices, regarding construction techniques to mitigate wildland fire. Where additional guidance is necessary in selecting the "best practice" for a particular "construction technique," an individual may refer to a variety of the building codes mentioned by the commenter.

COMMENT 16: One commenter suggested expressly defining the terms "heavy timber," "class B roof assembly," and "ignition-resistant construction," as opposed to referencing the IBC, IRC, or IWUIC definitions.

RESPONSE 16: See response to comment 15. In addition, New Rule I does not reference the IBC, IRC, or IWUIC definitions specifically, because terms such as "heavy timber" and "class B roof assembly" are terms of art, which are generally understood in the industry, and although may be defined slightly differently by each of the various appropriate building codes, they do not vary greatly in substance, nor in a manner that is distinguishable for the purposes of these rules.

Where deemed necessary, such as in the case of "ignition-resistant building materials," the department has defined the term, but has not done so by reference to a building code. Finally, even if the term were defined as suggested, it would not change the use of the technique stated in the rule.

COMMENT 17: Two commenters stated that New Rule II uses permissive language and, therefore, makes adoption of the subsequent rules up to the individual boards of county commissioners, and that enforcement of these regulations is being passed from the Building Codes Bureau to local government.

RESPONSE 17: The rules use permissive language because the department does not have the authority to make the rules binding on a local government. The statute referenced in New Rule II, 76-3-504, MCA, gives the local government discretion in whether to use the construction techniques identified by the department. Section 50-60-901(1), MCA, as stated in the proposed rule, required the department to "adopt rules identifying appropriate construction techniques that may be used by a local government in mitigation of identified fire hazards pursuant to 76-3-504(1)(e), MCA."

COMMENT 18: One commenter suggested deleting "and shall prevent the accumulation of leaves and debris by an approved method...," from New Rule VII, and instead inserting: "Gutters and downspouts shall be constructed of noncombustible materials." This change would be consistent with the IWUIC 2009, and eliminate uncertainty for local government to develop and enforce "an approved method" for accumulation of debris.

RESPONSE 18: See response 15 regarding the department's desire to mirror any particular building code language. In addition, the department decided it should provide some latitude in the construction technique, so that alternative methods may be explored and approved for the construction of a gutter system that will prevent the accumulation of additional fuels in the gutter itself. New Rule VII remains exactly as proposed.

COMMENT 19: One commenter suggested deleting (1) from New Rule VIII, stating that the cost of implementing this rule will nearly double the cost of windows in homes located in the WUI, and suggested replacing it with the IWUIC standard for a class 3 structure, which has no additional requirements for windows outside of what is found in the IRC.

RESPONSE 19: See response 15 regarding the department's desire to mirror any particular building code language. The department concluded that the effect of utilizing the IWUIC standard would be the removal of all glazing protection for structures located in a WUI, which does not address the goal of fire mitigation. The 20 percent benchmark on window-to-wall ratio allows designers or builders to mitigate the use of special protective glazing by maintaining a ratio of less than 20 percent. New Rule VIII remains unchanged.

COMMENT 20: One commenter recommended adding "fire-retardant-treated wood" as an option for vehicle access doors in New Rule VIII (3), so that the rule would read: "Vehicle access doors shall be constructed of ignition-resistant building materials or fire-retardant-treated wood." This option would provide adequate fire protection and be consistent with the IWUIC 2009.

RESPONSE 20: See response 15. The department concluded that for the purposes of these rules, "ignition-resistant building material" is synonymous with "fire-retardant-treated wood," and is not modifying the proposed rule.

COMMENT 21: One commenter recommended deleting (1) from New Rule IX, stating that the venting requirements listed are problematic because they may result in moisture issues and poor indoor air quality, and seem to conflict with IRC section 806.2, which requires a minimum amount of venting.

RESPONSE 21: See response 15 regarding the department's desire to mirror any particular building code language. In addition, the department concluded that the venting requirements in New Rule IX do not restrict the number of openings, but only size and location. The total amount of ventilation required by the IRC may still be met with proper placement and sizing of vents. The rule remains as proposed.

COMMENT 22: One commenter stated that the setback requirement of New Rule IX (1)(a) is too restrictive and unnecessary, as all county subdivision regulations already contain adequate setback requirements.

RESPONSE 22: The department concluded that the rule does not require the entire structure to be set back ten feet from property lines; it only requires that the location of gables or dormer vents on the structure be placed at least ten feet from the property line. New Rule IX remains as proposed.

COMMENT 23: One commenter recommended to replace New Rule IX with the following from the California Building Code: "Roof and attic vents shall resist the intrusion of flame and embers into the attic area of the structure, or shall be protected by corrosion-resistant, noncombustible wire mesh with openings a minimum of 1/8-inch (3.2 mm) and shall not exceed 1/4-inch (6 mm) or its equivalent. Vents shall not be installed in eaves and cornices. Exception: Eave and cornice vents may be used provided they resist the intrusion of flame and burning embers into the attic area of the structure."

RESPONSE 23: The department is adopting New Rule IX exactly as proposed. Although the California Building Code language is very similar to the proposed rule, the differences in the proposed rule are intentional, such as the "prevention" of ember or flame in the proposed rule, versus to merely "resist" embers and flames to enter vents, the proscription against placement of wall vents in areas that face heavy vegetation, placement of underfloor ventilation and gable dormer setbacks, and the exclusion of attic vents in certain areas. These differences allow for greater

protection, considering the rural nature of Montana and the potential longer firefighter response times than that of California.

COMMENT 24: One commenter recommended specific language changes to New Rule XII respecting Storage Tanks as follows: delete "buried underground" from (1) and replace with "installed in accordance with the National Fire Protection Standards NFPA 58 Liquefied Petroleum Gas Code and NFPA 30 Flammable and Combustible Liquids (the preferred method for tank installation would be underground)."

The commenter further suggested deleting from (1), "If soil or subsoil conditions prohibit complete burial, then tanks shall be partially covered by at least one foot of earth, sand, or other noncombustible material...," and substituting "Tanks storing flammable/combustible liquids shall be designed and installed in accordance with NFPA 30, and shall be listed and labeled for either aboveground or underground use, and cannot be interchanged. Underground tanks and piping require cathodic protection or shall be listed as corrosion resistant." The commenter suggested inserting in (2) "and NFPA 30" after "NFPA 58" and deleting "in lieu of burial." The commenter stated that optionally, (2) could be deleted entirely, because it is covered in the NFPA codes.

Finally, the commenter suggested deleting (3) entirely if the structure is not in a WUI, because there is no need to deviate from the NFPA.

RESPONSE 24: The department decided to amend New Rule XII to reference NFPA 30 (Flammable and Combustible Liquids) in (2) in addition to NFPA 58 (Liquefied Petroleum Gas Code), because the original rule addressed both "[p]ropane tanks and other flammable or combustible liquids storage." The department is adopting the rest of the rule exactly as proposed to describe the allowable best practices regarding storage tanks within the rule, and alleviate the need to refer to these particular sections of the NFPA.

COMMENT 25: A commenter stated that the construction techniques set forth in the rules should be consistent with the National Fire Protection Association (NFPA) 1144 standards for "development and construction of structures in Wildland-Urban Interface" areas [sic]. In particular, add sections 5.1.1.1 (all new construction in WUI areas should be designed, located, and constructed to comply with NFPA 1144 and the local building code) and 5.1.1.2 (conflicts between local building code and NFPA to be resolved toward the more stringent fire protection requirements).

RESPONSE 25: The department notes that comments 25 – 32 all advocate for the adoption of portions of the NFPA Standard 1144 (Standard for Reducing Structure Ignition Hazards from Wildland Fire). During the development of these rules, department staff and stakeholders reviewed fire mitigation standards from a variety of sources, including the NFPA 1144, NFPA 1141 (Standard for Fire Protection Infrastructure for Land Development in Suburban and Rural Areas); NFPA 220 (Standard on Types of Building Construction); International Code Council (ICC); International Building Code (IBC); International Residential Code (IRC); International Wildland-Urban Interface Code; and International Fire Code (IFC).

With the exception of referring to NFPA 30 and 58, which make reference to allowable alternatives to the best practices stated in the rule, and with respect to the installation of storage tanks containing flammable or combustible liquids, the department intentionally chose to avoid referencing the various building codes in favor of paraphrasing appropriate language from a variety of these building code sources to provide best practices and construction techniques necessary to meet the purpose of these rules. The department concluded that the proposed new rules sufficiently address the same topic of the section of the NFPA cited in comments 25 - 32. It is not the intent of the department to adopt one code in favor of another, where numerous, independent codes address fire mitigation.

COMMENT 26: One commenter recommended defining "Approved" in New Rule I (1)(b) to include the code official or "authority having jurisdiction" (AHJ), which in turn, is defined by NFPA 3.2.2 as "an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure."

RESPONSE 26: In addition to response 25, the department declines to adopt the NFPA definition of "authority having jurisdiction" to avoid the potential that the term could be construed to be broader than the language in the proposed rule, which defines "approved" as the "code official or authority having jurisdiction."

COMMENT 27: One commenter recommended replacing the definition of "Ignition-resistant building material" in New Rule I (1) with the proposed NFPA definition 3.3.13 as follows: "Any product designed for exterior exposure that, when tested in accordance with applicable standards, has a flame spread of not more than 25, shows no evidence of progressive combustion, and whose flame front does not progress more than 10 1/2 ft (3.2 m) beyond the centerline of the burner at any time during the test."

RESPONSE 27: See response 25. The department concluded that it is not necessary to adopt the NFPA term as the proposed rules sufficiently define that term for the purposes of providing construction techniques to mitigate fire in a WUI.

COMMENT 28: A commenter stated that the definition of "Wildland-Urban Interface" in New Rule I fails to define wildland or vegetative fuels, and suggested replacing it with the NFPA 3.3.28 definition as follows: "The presence of structures in locations in which the AHJ determines topographical features, vegetation fuel types, local weather conditions, and prevailing winds result in the potential for ignition of the structures within the area from flames and firebrands of a wildland fire."

RESPONSE 28: See response 25. In addition, because the rules deal with construction techniques, the definition of fuels or individual fuel types is outside the scope of a construction technique.

COMMENT 29: One commenter recommended to "Define Heavy Timber Materials with NFPA Official Definitions 3.3.12* Heavy Timber Construction. Type IV (2HH) construction as defined in *NFPA 5000, Building Construction and Safety Code*."

RESPONSE 29: See responses 9 and 25 on "heavy timber."

COMMENT 30: One commenter recommended that the rules add language to require vegetation/fuel modification as a prerequisite for completion of construction or issuance of final plat approval, specifically, to incorporate the language of NFPA 5.1.34, 6.1, and 6.2.

RESPONSE 30: See response 25. In addition, NFPA Sections 5.1.34, 6.1, and 6.2 deal with vegetation and fuel mitigation; again, although they represent very specific and thorough, good practices with respect to mitigating fires, they do not fall under the scope of building construction techniques as directed in these rules.

COMMENT 31: One commenter recommended changing New Rule XI on accessory structures to NFPA 5.3 "Overhanging Projections."

RESPONSE 31: See response 25. In addition, NFPA 5.3 details the same provisions to protect such projections as those proposed in the rule.

COMMENT 32: One commenter recommended adding a definition for "Structure ignition zone" from NFPA (Annex A) A.3.3.25 as "Structures and their immediate surroundings…."

RESPONSE 32: See response 25. In addition, NFPA (Annex A) A.3.3.25 refers to defensible space dimensions and specifications, and although they represent very specific and thorough, good practices, they do not fall under the scope of construction techniques as directed in these rules.

5. The department has adopted NEW RULE II (24.320.302), NEW RULE III (24.320.303), NEW RULE IV (24.320.304), NEW RULE V (24.320.305), NEW RULE VI (24.320.306), NEW RULE VII (24.320.307), NEW RULE VIII (24.320.308), NEW RULE IX (24.320.309), NEW RULE X (24.320.310), NEW RULE XI (24.320.311), and NEW RULE XIII (24.320.313) exactly as proposed.

6. The department has adopted NEW RULE I (24.320.301) and NEW RULE XII (24.320.312) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I (24.320.301) DEFINITIONS (1) through (1)(h)(ii) remain as proposed.

(i) "Wildland-Urban Interface" (WUI), means ~~that geographical~~ the line, area, or zone where structures and other human development meet or intermingle with undeveloped wildland or vegetative fuels.

NEW RULE XII (24.320.312) STORAGE TANKS (1) remains as proposed.

(2) Other installation methods such as installation in vaults or other protective methods that comply with NFPA 30 and NFPA 58 standards may be used in lieu of burial.

(3) remains as proposed.

/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 February 14, 2011

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEE

Interim Committees and the Environmental Quality Council

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

Economic Affairs Interim Committee:

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

Education and Local Government Interim Committee:

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

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

- Department of Public Health and Human Services.

Law and Justice Interim Committee:

- Department of Corrections; and
- Department of Justice.

Energy and Telecommunications Interim Committee:

- Department of Public Service Regulation.

Revenue and Transportation Interim Committee:

- Department of Revenue; and
- Department of Transportation.

State Administration and Veterans' Affairs Interim Committee:

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

Environmental Quality Council:

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

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

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

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

Definitions:

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

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

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking the accumulative table and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

ACCUMULATIVE TABLE

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through September 30, 2010. This table includes those rules adopted during the period October 1, 2010, through December 31, 2010, and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through September 30, 2010, 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 2010 and 2011 Montana Administrative Register.

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

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2.21.215 and other rules - Annual Leave Policy, p. 804, 1356, 1603
2.21.305 and other rules - Disaster and Emergency Leave Policy, p. 808, 1358, 1605
2.21.501 and other rules - Jury Duty - Witness Leave Policy, p. 1362, 1792
2.21.1701 and other rules - Overtime - Nonexempt Compensatory Time, p. 1365, 1793
2.21.1801 and other rules - Exempt Compensatory Time Policy, p. 811, 1360, 1606
2.21.3702 and other rules - Recruitment - Selection, p. 1368, 1633, 2208
2.21.3801 and other rules - Probation, p. 1382, 1794
2.59.1718 and other rules - Exemptions Under 32-9-104, MCA, Determining the Amount of the Surety Bond Required for New Applicants - Date by Which the Montana Test Must Be Completed in Order to Be Licensed as a Mortgage Loan Originator in Montana - Temporary Licenses - Transition Fees, p. 2627, 2956

(Public Employees' Retirement Board)

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2.43.2105 Basic Period of Service, p. 132

2.43.3501 and other rule - Adoption by Reference of the State of Montana Public Employees Pooled Trust - Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document - State of Montana Public Employee Deferred Compensation (457) Plan Document, p. 941, 1229, 1725

2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 937, 1227, 1724

2.43.3502 and other rule - Investment Policy Statement for the Defined Contribution Retirement Plan - Investment Policy Statement for the 457 Deferred Compensation Plan, p. 1831, 2571

2.43.5104 Adoption by Reference of the Declaration of Trust- State of Montana Public Employees Pooled Trust, p. 1920, 2572

(Teachers' Retirement System)

2.44.304 and other rule - Qualifications of the Actuary Engaged by the Teachers' Retirement System - Annual Report of Employment Earnings by Disabled Retirees of the Teachers' Retirement System, p. 1763, 2344

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BOARD APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of appointees and upcoming or current vacancies on those boards and councils.

In this issue, appointments effective in January, 2011 appear. Vacancies scheduled to appear from March 1, 2011, through May 31, 2011, are listed, as are current vacancies due to resignations or other reasons. Individuals interested in serving on a board should refer to the bill that created the board for details about the number of members to be appointed and necessary qualifications.

Each month, the previous month's appointees are printed, and current and upcoming vacancies for the next three months are published.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 1, 2011.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Chiropractors (Labor and Industry)			
Dr. Scott Hansing	Governor	reappointed	1/6/2011
Helena			1/1/2014
Qualifications (if required): practicing chiropractor with at least one year experience			
Board of Crime Control (Justice)			
Ms. Brenda C. Desmond	Governor	reappointed	1/19/2011
Missoula			1/1/2015
Qualifications (if required): representative of the judiciary			
Director Mike Ferriter	Governor	reappointed	1/19/2011
Helena			1/1/2015
Qualifications (if required): state law enforcement representative			
Ms. Randi Hood	Governor	reappointed	1/19/2011
Helena			1/1/2015
Qualifications (if required): representative of a criminal justice agency			
Mr. Richard Kirn	Governor	reappointed	1/19/2011
Poplar			1/1/2015
Qualifications (if required): tribal government representative			
Ms. Sherry Matteucci	Governor	reappointed	1/19/2011
Billings			1/1/2015
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Crime Control (Justice) cont.			
Ms. Lois Menzies	Governor	reappointed	1/19/2011
Helena			1/1/2015
Qualifications (if required): representative of the judiciary			
Rep. Angela Russell	Governor	reappointed	1/19/2011
Lodge Grass			1/1/2015
Qualifications (if required): public representative			
Mr. Godfrey Saunders	Governor	reappointed	1/19/2011
Bozeman			1/1/2015
Qualifications (if required): representative of the judiciary			
Board of Horseracing (Livestock)			
Ms. Susan Egbert	Governor	reappointed	1/19/2011
Helena			1/20/2014
Qualifications (if required): resident of District 4			
Board of Housing (Commerce)			
Mr. Bob Gauthier	Governor	reappointed	1/6/2011
Ronan			1/1/2015
Qualifications (if required): public representative			
Rep. Jeanette S. McKee	Governor	reappointed	1/6/2011
Hamilton			1/1/2015
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Board of Housing (Commerce) cont.			
Rep. Sheila Rice	Governor	reappointed	1/6/2011
Great Falls			1/1/2015
Qualifications (if required): public representative			
Board of Public Education (Higher Education)			
Rep. Douglas E. Cordier	Governor	Forrest	1/26/2011
Columbia Falls			2/1/2013
Qualifications (if required): resident of District 1 and a Democrat			
Rep. Lila V. Taylor	Governor	Gilbert	1/26/2011
Busby			2/1/2018
Qualifications (if required): resident of District 2 and a Republican			
Commissioner of Political Practices (Commissioner of Political Practices)			
Ms. Jennifer L. Hensley	Governor	Unsworth	1/3/2011
Butte			1/1/2017
Qualifications (if required): none specified			
Judicial Nomination Commission (Judiciary)			
Ms. Shirley Ball	Governor	reappointed	1/11/2011
Nashua			1/1/2015
Qualifications (if required): public representative			
Livestock Loss Reduction and Mitigation Board (Livestock)			
Ms. Elaine Allestad	Governor	reappointed	1/21/2011
Big Timber			1/1/2015
Qualifications (if required): nominated by the Board of Livestock			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Livestock Loss Reduction and Mitigation Board (Livestock) cont.			
Mr. John Herman	Governor	reappointed	1/21/2011
Hot Springs			1/1/2015
Qualifications (if required): nominated by the Board of Livestock			
Mr. Larry Trexler	Governor	reappointed	1/21/2011
Hamilton			1/1/2015
Qualifications (if required): nominated by the Board of Livestock			
Lottery Commission (Administration)			
Mr. Leo Prigge	Governor	Crippen	1/7/2011
Butte			1/1/2015
Qualifications (if required): public accountant			
Milk Control Board (Livestock)			
Mr. W. Scott Mitchell	Governor	Kleese	1/7/2011
Billings			1/1/2015
Qualifications (if required): attorney that identifies himself as a Democrat			
Mr. Jerrold A. Weissman	Governor	reappointed	1/7/2011
Great Falls			1/1/2015
Qualifications (if required): public representative that identifies himself as a Republican			
Public Employees Retirement Board (Administration)			
Mr. Timm Twardoski	Governor	reappointed	1/7/2011
Helena			4/1/2016
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Public Safety Officer Standards and Training Council (Justice)			
Commissioner Mike Anderson Havre Qualifications (if required): Board of Crime Control representative	Governor	reappointed	1/19/2011 1/1/2015
Ms. Georgette Hogan Hardin Qualifications (if required): county attorney	Governor	reappointed	1/19/2011 1/1/2015
Mr. Lewis Matthews Wolf Point Qualifications (if required): certified tribal law enforcement representative	Governor	Weeks	1/19/2011 1/1/2015
Ms. Winnie Ore Helena Qualifications (if required): public representative	Governor	reappointed	1/19/2011 1/1/2015
Mr. John Schaffer Great Falls Qualifications (if required): local law enforcement officer (nonadministrative)	Governor	Talkington	1/19/2011 1/1/2015
Mr. James Smith Libby Qualifications (if required): chief of police	Governor	Marble	1/19/2011 1/1/2015

BOARD AND COUNCIL APPOINTEES FROM JANUARY, 2011

Appointee	Appointed by	Succeeds	Appointment/End Date
Respiratory Care Practitioners (Labor and Industry)			
Mr. Thomas Fallang	Governor	reappointed	1/7/2011
Butte			1/1/2015
Qualifications (if required): respiratory care practitioner			
State Tax Appeals Board (Administration)			
Ms. Samantha Sanchez	Governor	reappointed	1/6/2011
Helena			1/1/2017
Qualifications (if required): public representative			

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2011 THROUGH MAY 31, 2011

Board/current position holder	Appointed by	Term end
Board of Architects and Landscape Architects (Labor and Industry)		
Mr. Bayliss Ward, Bozeman	Governor	3/27/2011
Qualifications (if required): registered architect with three years continuous practice		
Board of Dentistry (Labor and Industry)		
Dr. Mark Colonna, Whitefish	Governor	3/29/2011
Qualifications (if required): licensed dentist with at least 5 years experience		
Ms. Laura Germann, Glendive	Governor	3/29/2011
Qualifications (if required): public representative		
Ms. Luella Vogel, Great Falls	Governor	3/29/2011
Qualifications (if required): public representative		
Board of Hail Insurance (Agriculture)		
Mr. Gary Gollehon, Brady	Governor	4/18/2011
Qualifications (if required): public member		
Board of Livestock (Livestock)		
Ms. Janice French, Hobson	Governor	3/1/2011
Qualifications (if required): cattle producer		
Mr. Ed Waldner, Chester	Governor	3/1/2011
Qualifications (if required): swine producer		
Mr. Jeffery Lewis, Corvallis	Governor	3/1/2011
Qualifications (if required): dairy producer		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2011 THROUGH MAY 31, 2011

Board/current position holder	Appointed by	Term end
Board of Massage Therapists (Labor and Industry)		
Mr. Michael Eayrs, Kalispell	Governor	5/6/2011
Qualifications (if required): massage therapist		
Board of Nursing Home Administrators (Labor and Industry)		
Ms. Polly Nikolaisen, Kalispell	Governor	5/28/2011
Qualifications (if required): public representative 55 years of age or older		
Mr. Ken Chase, Billings	Governor	5/28/2011
Qualifications (if required): public representative		
Board of Optometry (Labor and Industry)		
Ms. Delores Hill, Mosby	Governor	4/3/2011
Qualifications (if required): public member		
Mr. Douglas Kimball, Bozeman	Governor	4/3/2011
Qualifications (if required): registered optometrist		
Board of Plumbers (Labor and Industry)		
Mr. Marcus J Golz, Helena	Governor	5/4/2011
Qualifications (if required): representative of the Department of Environmental Quality		
Mr. Scott Lemert, Livingston	Governor	5/4/2011
Qualifications (if required): master plumber		
Mr. David Lindeen, Huntley	Governor	5/4/2011
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2011 THROUGH MAY 31, 2011

Board/current position holder	Appointed by	Term end
Board of Plumbers (Labor and Industry) cont.		
Ms. Debi Friede, Havre	Governor	5/4/2011
Qualifications (if required): public representative		
Mr. Steve Carey, Frenchtown	Governor	5/4/2011
Qualifications (if required): journeyman plumber		
Board of Real Estate Appraisers (Labor and Industry)		
Mr. Peter Fontana, Great Falls	Governor	5/1/2011
Qualifications (if required): real estate appraiser		
Mr. Kraig Kosena, Missoula	Governor	5/1/2011
Qualifications (if required): real estate appraiser		
Board of Realty Regulation (Labor and Industry)		
Mr. C.E. Abe Abramson, Missoula	Governor	5/9/2011
Qualifications (if required): real estate salesperson and identifies himself as a Democrat		
Ms. Shirley McDermott, Laurel	Governor	5/9/2011
Qualifications (if required): public representative and identifies herself as a Republican		
Ms. Connie Wardell, Billings	Governor	5/9/2011
Qualifications (if required): Democrat		
Mr. Larry Milless, Corvallis	Governor	5/9/2011
Qualifications (if required): Republican		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2011 THROUGH MAY 31, 2011

Board/current position holder	Appointed by	Term end
Clinical Laboratory Science Practitioners (Labor and Industry)		
Ms. Charliene Staffanson, Deer Lodge Qualifications (if required): public representative	Governor	4/16/2011
Ms. Rosemary Shively, Helena Qualifications (if required): clinical laboratory science practitioner	Governor	4/16/2011
Ms. Barbara Henderson, Miles City Qualifications (if required): clinical laboratory science practitioner	Governor	4/16/2011
County Printing Board (Administration)		
Commissioner Marianne Roose, Eureka Qualifications (if required): County Commissioner	Governor	4/1/2011
Mr. Dan Killoy, Miles City Qualifications (if required): printing industry representative	Governor	4/1/2011
Mr. Milton Wester, Laurel Qualifications (if required): printing industry representative	Governor	4/1/2011
Mr. Calvin J. Oraw, Sidney Qualifications (if required): public representative	Governor	4/1/2011
Commissioner Laura Obert, Townsend Qualifications (if required): County Commissioner	Governor	4/1/2011

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2011 THROUGH MAY 31, 2011

Board/current position holder	Appointed by	Term end
Library Commission (State Library)		
Ms. Nora Smith, Bozeman	Governor	5/22/2011
Qualifications (if required): public representative		
Ms. Joyce Funda, Rollins	Governor	5/22/2011
Qualifications (if required): public representative		
Mr. Richard Quillin, Whitefish	Governor	5/22/2011
Qualifications (if required): public representative		
Ms. Lee Phillips, Butte	Governor	5/22/2011
Qualifications (if required): public representative		
MSU - Great Falls College of Technology Local Executive Board (University System)		
Mr. Dave Warner, Great Falls	Governor	4/15/2011
Qualifications (if required): public representative		
MSU - Northern Local Executive Board (University System)		
Ms. Pamela A. Hillery, Havre	Governor	4/15/2011
Qualifications (if required): public representative		
Montana Heritage Preservation and Development Commission (Commerce)		
Rep. Bob Lawson, Whitefish	Governor	5/23/2011
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2011 THROUGH MAY 31, 2011

Board/current position holder	Appointed by	Term end
Montana Heritage Preservation and Development Commission (Commerce) cont.		
Mr. Paul Tuss, Havre	Governor	5/23/2011
Qualifications (if required): Tourism Advisory Council representative		
General James Womack, Dillon	Governor	5/23/2011
Qualifications (if required): Montana historian		
Ms. Carol Swanson, Glendive	Governor	5/23/2011
Qualifications (if required): public representative		
Montana State University - Billings Local Executive Board (University System)		
Mr. Jeremy Seidlitz, Billings	Governor	4/15/2011
Qualifications (if required): public representative		
Montana State University Local Executive Board (University System)		
Mr. Bill Bryan, Bozeman	Governor	4/15/2011
Qualifications (if required): public representative		
Private Alternative Adolescent Residential or Outdoor Programs Board (Labor and Industry)		
Rep. Tim Callahan, Great Falls	Governor	4/19/2011
Qualifications (if required): public member		
Ms. Mary Alexine, Eureka	Governor	4/19/2011
Qualifications (if required): representing residential adolescent programs (medium size)		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2011 THROUGH MAY 31, 2011

Board/current position holder	Appointed by	Term end
Private Alternative Adolescent Residential or Outdoor Programs Board (Labor and Industry) cont.		
Mr. John Santa, Kalispell	Governor	4/19/2011
Qualifications (if required): representing residential adolescent programs (large size)		
Ms. Darcie Kelly, Helena	Governor	4/19/2011
Qualifications (if required): public member		
Ms. Penny James, Trout Creek	Governor	4/19/2011
Qualifications (if required): representing residential adolescent programs (small size)		
Public Employees Retirement Board (Administration)		
Mr. Timm Twardoski, Helena	Governor	4/1/2011
Qualifications (if required): public representative		
State Compensation Mutual Insurance Fund Board (Administration)		
Mr. Joe Dwyer, Billings	Governor	4/28/2011
Qualifications (if required): policy holder		
Mr. Wally Yovetich, Billings	Governor	4/28/2011
Qualifications (if required): private enterprise		
Mr. Boyd Taylor, Butte	Governor	4/28/2011
Qualifications (if required): policy holder and in private enterprise		
UM-Helena College of Technology Local Executive Board (University System)		
Mr. Ray Peck, Helena	Governor	4/15/2011
Qualifications (if required): public representative		

VACANCIES ON BOARDS AND COUNCILS -- MARCH 1, 2011 THROUGH MAY 31, 2011

Board/current position holder	Appointed by	Term end
UM-Montana Tech Local Executive Board (University System)		
Mr. Doug Peoples, Butte	Governor	4/15/2011
Qualifications (if required): public representative		
UM-Western Local Executive Board (University System)		
Ms. Mary Ann Nicholas, Dillon	Governor	4/15/2011
Qualifications (if required): public representative		
University of Montana Local Executive Board (University System)		
Mr. Bill Woody, Missoula	Governor	4/15/2011
Qualifications (if required): public representative		