

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 6

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 8.94.3727 pertaining to the ) PROPOSED AMENDMENT  
administration of the 2011-2012 )  
Federal Community Development )  
Block Grant (CDBG) Program )

TO: All Concerned Persons

1. On April 11, 2012, at 1:30 p.m., the Department of Commerce will hold a public hearing in Room 226 of the Park Avenue Building at 301 South Park Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on April 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Debra Demarais, Business Resource Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0523; telephone (406) 841-2736; fax (406) 841-2731; TDD (406) 841-2702; or e-mail [ddemarais@mt.gov](mailto:ddemarais@mt.gov).

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

8.94.3727 INCORPORATION BY REFERENCE OF RULES FOR THE ADMINISTRATION OF THE 2010-2011 CDBG PROGRAM (1) The Department of Commerce adopts and incorporates by reference the Montana Community Development Block Grant Program FFY 2011 Application Guidelines for Housing and Public Facilities Planning Grants; the FFY 2011 Application Guidelines for the Community Development Block Grant Economic Development Program as amended [Draft April 2012]; the FFY 2012 Application Guidelines for the Community Development Block Grant Economic Development Program; the Montana Community Development Block Grant Economic Development Program FFY 2011 Application Guidelines for Planning Projects; the Montana Community Development Block Grant FFY 2011 Application Guidelines for the Neighborhood Stabilization Program (NSP); the Montana Community Development Block Grant Program and Neighborhood Stabilization Program (NSP) FFY 2011 Grant Administration Manual published as rules for the administration of the CDBG and NSP programs; and the Montana Community Development Block Grant Program FFY 2012 Application Guidelines for Public Facilities Projects and the FFY 2012 Application Guidelines for Housing and Neighborhood Renewal Projects.

- (2) The rules incorporated by reference in (1) relate to the following:
  - (a) policies governing the program;
  - (b) requirements for applicants;

- (c) procedures for evaluating applications;
- (d) procedures for local project start up;
- (e) environmental review of project activities;
- (f) procurement of goods and services;
- (g) financial management;
- (h) protection of civil rights;
- (i) fair labor standards;
- (j) acquisition of property and relocation of persons displaced thereby;
- (k) administrative considerations specific to public facilities, housing and neighborhood renewal, economic development, and neighborhood stabilization projects;
- (l) project audits;
- (m) public relations;
- (n) project monitoring; and
- (o) planning assistance.

(3) Copies of the Application Guidelines and Grant Administration Manual adopted by reference in (1) can be viewed on the department's web site at <http://comdev.mt.gov/default.mcpX> or <http://businessresources.mt.gov/cdbg/default.mcpX> <http://cdbgged.mt.gov/draftguidelines.mcpX>, or may be obtained from the Department of Commerce, Community Development Block Grant Economic Development Program (CDBG-ED) and 90-1-103, MCA, require the department to adopt rules to implement the program. Local governments must have these application guidelines in order to apply for CDBG-ED funds.

AUTH: 90-1-103, MCA  
IMP: 90-1-103, MCA

REASON: It is reasonably necessary to amend this rule because the federal regulations governing the state's administration of the FFY 2011 & FFY 2012 Community Development Block Grant Economic Development Program (CDBG-ED) and 90-1-103, MCA, require the department to adopt rules to implement the program. Local governments must have these application guidelines in order to apply for CDBG-ED funds.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Debra Demarais, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0523; telephone (406) 841-2736; fax (406) 841-2731; or e-mail [ddemarais@mt.gov](mailto:ddemarais@mt.gov), and must be received no later than 5:00 p.m., April 19, 2012.

5. Debra Demarais, Department of Commerce, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-

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

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

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

/s/ KELLY A. CASILLAS  
KELLY A. CASILLAS  
Rule Reviewer

/s/ DORE SCHWINDEN  
DORE SCHWINDEN  
Director  
Department of Commerce

Certified to the Secretary of State March 12, 2012.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PROPOSED
ARM 8.99.303 pertaining to the	)	AMENDMENT
Certified Regional Development	)	
Corporations Program	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On April 21, 2012, the Department of Commerce proposes to amend the above-stated rule.

2. The Department of Commerce will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Commerce no later than 5:00 p.m. on April 16, 2012, to advise us of the nature of the accommodation that you need. Please contact Janice Wannebo, Business Resources Division, Department of Commerce, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone (406) 841-2751; fax (406) 841-2731; TDD (406) 841-2702; or e-mail jwannebo@mt.gov.

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

8.99.303 ASSISTANCE GRANTS – DISTRIBUTION (1) and (1)(a) remain the same.

(b) ~~\$65,000~~ the remainder divided among the CRDCs according to the following formula:

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

AUTH: 90-1-116, MCA

IMP: 90-1-116, MCA

REASON: This change is necessary because it is possible to have fewer than the maximum number of twelve CRDCs allowed under current statute. In that event, funds statutorily appropriated to the CRDCs will remain undisbursed due to the "\$65,000.00" amount set forth in (1)(b). The proposed change allows the existing statutory appropriation to be fully obligated when there are less than twelve CRDCs in operation, and ensures that all funding (e.g. "the remainder") is distributed equally according to the formula in (1)(b). Failure to make this change will result in a balance of unobligated funds when less than twelve CRDCs are in existence.

4. Concerned persons may submit their data, views, or arguments in writing to: Janice Wannebo, Department of Commerce, Business Resources Division, 301 South Park Avenue, P.O. Box 200505, Helena, Montana 59620-0505; telephone

(406) 841-2751; fax (406) 841-2731; or e-mail [jwannabo@mt.gov](mailto:jwannabo@mt.gov), and must be received no later than 5:00 p.m., April 19, 2012.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Janice Wannabo at the above address no later than 5:00 p.m., April 19, 2012.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 5 persons based on the number of CRDCs at the time of this notice of proposed amendment.

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 section 4 above or may be made by completing a request form at any rules hearing held by the department.

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

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

/s/ G. Martin Tuttle  
G. Martin Tuttle  
Rule Reviewer

/s/ Dore Schwinden  
DORE SCHWINDEN  
Director  
Department of Commerce

Certified to the Secretary of State March 12, 2012.



BEFORE THE MONTANA ARTS COUNCIL

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 10.111.701, 10.111.702,	)	PROPOSED AMENDMENT AND
10.111.704, 10.111.706, and	)	REPEAL
10.111.707, and repeal of ARM	)	
10.111.705 and 10.111.708	)	
pertaining to cultural and aesthetic	)	
project grant proposals	)	

TO: All Concerned Persons

1. On April 11, 2012, at 10:30 a.m., the Montana Arts Council will hold a public hearing at 830 N. Warren Street, First Floor, in Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Montana Arts Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Montana Arts Council no later than 5:00 p.m. on April 4, 2012, to advise us of the nature of the accommodation that you need. Please contact Kristin Burgoyne, Montana Arts Council, P.O. Box 202201, Helena, Montana, 59620-2201; telephone (406) 444-6449; fax (406) 444-6548; or e-mail mac@mt.gov.

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

10.111.701 ELIGIBLE APPLICANTS (1) Any person, association, or representative of a governing unit may submit an application for funding of a cultural and aesthetic project from the income of the trust fund. The term "governing unit" includes state, regional, county, city, town, or Indian tribe. ~~The governing unit may itself seek funds or sponsor the application of other persons, organizations, associations or coalitions of organizations.~~

~~(a) The applicant is defined as the governing unit submitting the application and having fiscal and legal responsibility for the project.~~

~~(b) The benefitting organization is defined as the organization directly benefitting from the grant whether it is the applicant or another organization, association or coalition of organizations.~~

AUTH: 22-2-303, MCA

IMP: 22-2-301, MCA

10.111.702 APPLICATION FORM FOR GRANT PROPOSALS (1) The committee shall have prepared a standard application form for grant proposals to the committee, ~~and shall include requests for information from the benefitting organization concerning the following:~~

~~(a) Sponsorship by the governing unit whereby the unit indicates the~~

~~availability of accounting and financial services and responsibilities for the proposal, if funded;~~

~~(b) A narrative description of the project;~~

~~(c) A statement specifying the community, regional or statewide need addressed by the project;~~

~~(d) A statement of the purpose of the project which shall include objectives and a timeline for intended results;~~

~~(e) A statement addressing the means and methods for implementation of the project;~~

~~(f) A statement of the end result of the project as intended by the benefitting organization, and a plan for evaluation upon termination of the project;~~

~~(g) A statement describing the audiences, area and population to be served;~~

~~(h) A statement addressing project publicity and accessibility;~~

~~(i) Resumes or descriptions of related experience or expertise of staff or volunteers;~~

~~(j) A complete line item budget request to include planned expenditures of granted funds and a statement of available or supplementary source(s) of funding and in-kind or matching contributions;~~

~~(i) In-kind goods and services are contributions specifically identified with the project which are provided to the benefitting organization by volunteers or their parties at no cash cost to the benefitting organization. These may include but are not limited to donations of food and housing for guest artists and speakers, office space, facilities or equipment rental, and materials voluntarily contributed which otherwise would have been paid for. Volunteer time may be claimed as an in-kind contribution, but it must be calculated at a "fair market" price, that is, minimum wage that a person paid to do the same work would be paid. The in-kind contribution used as a match for a particular project may not be used as a match for any other project requesting cultural and aesthetic project grant assistance.~~

~~(ii) Matching funds are funds (other than any cultural and aesthetic grants) which are allocated or received by the benefitting organization during the two fiscal years of the grant period and used exclusively for the project receiving cultural and aesthetic grant funds.~~

~~(iii) For all grants with the exception of challenge grants for permanent endowment development, documentation that matching funds are being committed by the benefitting organization or will be available, must be received by the last day of the first fiscal year of the grant period.~~

~~(iv) For challenge grants for permanent endowment development, documentation of match must be received by the last day of the grant period.~~

~~(v) County or municipally owned cultural facilities must obtain financial and in-kind support from respective local governments.~~

~~(vi) Effective July 1, 1985 and pursuant to, 22-2-308 MCA and these rules, government units may apply on behalf of private museums, art centers and cultural facilities and receive the first grant without local governmental funds, but are encouraged to seek mill levy, general fund or other local governmental financial or in-kind support.~~

~~(A) For all subsequent grants, private museums, art centers or other cultural facilities must receive county or municipal financial or in-kind support to be eligible~~

for funds:

~~(vii) A cultural facility is defined as a building or number of buildings operated significantly for the purpose of presenting public programs and activities in one or more of the eligible projects.~~

~~(A) The benefitting organization must provide information regarding the ownership of the cultural facility, i.e., private profit making, private non-profit, city, county, state or federal.~~

~~(B) The benefitting organization must provide documentation from the local government regarding:~~

~~(I) The source of local governmental funds, i.e., city or county, and the type of local governmental funds, e.g., general funds, revenue sharing, community block grant, permissive mill levy, etc.~~

~~(II) The level of cash support. If mill levy funds have been appropriated, indicate the number of mills and the dollar amount this millage annually provides for the benefitting organization's facility and the total mills and dollar amount this millage annually provides for all cultural facilities in the county.~~

~~(III) The value of in-kind support including what is being contributed and the source of the contribution.~~

~~(IV) If any indirect costs are included in the budget, the benefitting organization must indicate if these costs are to be used as match or if they are intended to be paid from coal tax funds.~~

~~(k) Additional information may be required by the committee of the benefitting organization.~~

AUTH: 22-2-203, MCA

IMP: 22-2-303, 22-2-308, MCA

10.111.704 ELIGIBLE PROJECTS (1) Grant proposals must be for the purpose of protecting works of art in the state capitol or other cultural and aesthetic projects, including but not limited to the visual, performing, literary and media arts, history, archaeology, folk-lore, archives, libraries, historical preservation and the renovation of cultural facilities. Applicants may apply for funds in one or more of the following categories:

(a) Special projects: Specific activities, services, or events of limited duration and the expansion of ongoing programs to meet defined needs and support for grants which generate new sources of revenue.

(i) ~~Generally each~~ Each dollar in project grants ~~should~~ must be matched with one dollar in cash or in-kind goods and services.

(ii) ~~Benefitting organizations~~ Applicants will be required to submit a project budget, and an organizational operations budget for the grant period. ~~If grant funds are being requested for a project which has been conducted in prior years, financial statements of the project from the most recent two full years must be provided.~~

(b) Operational support for cultural institutions that have been in existence for at least two years.

~~(i) It is not the intention for operational support grants to reduce the applicant's fund raising efforts or to support program expansion.~~

~~(ii) In special circumstances, applications for operational support may be~~

considered:

~~(iii) The benefitting organization will be required to demonstrate a need which may include:~~

~~(A) the development of emerging cultural institutions;~~

~~(l) An emerging cultural institution is in the early stages of development, i.e., formally organized for at least two years with an on-going program and generally with paid professional staff.~~

~~(B) organizations with unusually high expenses without available local funding sources;~~

~~(C) organizations which serve the entire state or a significant sub-state region;~~

~~(D) well managed and established organizations in confronting emergency situations;~~

~~(E) organizations which are recognized as essential to Montana's cultural life because of their excellence of programming and longevity of service to the state;~~

~~(F) organizations which provide a high ratio of cash match to grant request.~~

~~(iv)(i) Generally each Each dollar in general support grants should must be matched with one dollar in cash or in-kind goods and services.~~

~~(v)(ii) Benefitting organizations Applicants will be required to submit financial statements (profit and loss) for the most recently completed two fiscal years:.~~

~~(A) the prior two fiscal years,~~

~~(B) actual and budgeted expenses and income for the current year, and~~

~~(C) budgets for the grant period.~~

~~(vi) For applications of \$20,000 or more in operational support, submission of a current audit of the benefitting organization is required. If none exists, an unaudited financial review signed by an independent accountant will suffice. Where the benefitting organization is an agency of state or local government and the audit performed includes the entire agency, a copy of such audit will suffice.~~

~~(A) A financial review consists principally of inquiries of organization personnel and analytic procedures applied to financial data. It is substantially less in scope than in audit and thereby no opinion is expressed.~~

~~(B) The accompanying report should state that the accountant is not aware of any material modifications that should be made to the financial statements in order for them to be in conformance with generally accepted principles, other than those modifications, if any, indicated in the report.~~

~~(c) Capital expenditure projects for additions to a collection or acquisition of works of art, artifacts or historical documents; historic preservation or the construction or renovation of cultural facilities.~~

~~(i) Each dollar in capital expenditure projects grants must be matched with three dollars in cash or in-kind goods and services.~~

~~(i)(ii) Any application for funds which may in any way affect prehistoric or historic properties must document cooperation with the state historic preservation office in evaluating the possible impact on these properties and the appropriateness of plans for project activity.~~

~~(ii)(iii) A letter from the state historic preservation office, stating their recommendations and any agreements reached with the benefitting organization applicant is necessary. No funds will be released until such a letter is received by~~

the Montana Arts Council.

~~(iii) Benefitting organizations will be required to provide three dollars in cash or in-kind donations of goods and services specifically for the capital expenditure project for each grant dollar.~~

~~(iv) Applications requesting funds for facility acquisition, construction, or renovation will need to include:~~

~~(A) a financial statement of the operational costs of the facility from the most recently completed fiscal year prior to the date of application deadline summary of the total cost of the capital expenditure from beginning to end;~~

~~(B) operational budgets of the facility for the first full year after the completion of the project;~~

~~(C) information about sources and amounts of funds already committed and anticipated to be received; and~~

~~(E)(C) plans for obtaining the balance of funds based on prior fund raising efforts;~~

~~(F) the expected duration of the facility renovation or construction.~~

~~(d) Challenge grants for permanent endowment development to benefit cultural nonprofit grant applicants may be recommended for funding.~~

AUTH: 22-2-303, MCA

IMP: 22-2-303, 22-2-308, MCA

10.111.706 EVALUATION CRITERIA (1) Evaluation criteria is established in the application and guidelines. ~~Recommendations for funding of individual applications must be based upon evaluation of the following considerations:~~

~~(a) Quality of the project:~~

~~(i) whether the technical, artistic and administrative abilities and experience of the benefiting organization, its staff and/or volunteers makes probable the completion and implementation of the project within the grant period;~~

~~(ii) whether the project is creative or innovative, practical or beneficial, and whether the project may stimulate other projects.~~

~~(b) Cultural impact of the project:~~

~~(i) whether the project may contribute to or improve the cultural life or development of the community, county, region or state;~~

~~(ii) whether the project addresses an identified need within the proposed area, and establishes, maintains or augments an activity or service;~~

~~(iii) whether the project has stated goals that are within the resource capability of the benefiting organization and whether there is a reasonable likelihood that the goals will be attained;~~

~~(iv) whether the project has benefit, availability and accessibility to the public.~~

~~(c) Cost factors of the project:~~

~~(i) the need for project, operational, capital or endowment development support;~~

~~(ii) the cost-effectiveness of the project;~~

~~(iii) the relative level of local support as demonstrated by cash match from local sources or in-kind goods and services;~~

- ~~(iv) the level of cost-sharing as reflected in the mix of earned income, private contributions, governmental support and interest income;~~
- ~~(v) the potential of the project to stimulate other sources of funding or to become self-supporting;~~
- ~~(vi) the probability of accomplishing the project within budget and with available resources.~~

AUTH: 22-2-303, MCA

IMP: 22-2-302, 22-2-306, MCA

10.111.707 CRITERIA FOR RECOMMENDATIONS (1) Committee recommendations to the Legislature of those projects which meet the evaluation criteria to the extent possible also must address the following considerations:

- ~~(a) Geographical diversity~~— taken as a whole, grants should assist the entire state;
- ~~(b) Cultural diversity~~— recognizing the special needs of access to cultural and aesthetic projects and services and the unique perspective, skills, talents and contributions of the wide variety of the people of Montana, the grants recommended, taken as a whole, should reflect and affirm that diversity, and as such, provide enrichment to the population at large. These projects should encourage the expansion of opportunities for all Montanans to create, participate in, and appreciate the wide range of all cultural and aesthetic activities regardless of age, sex, race, ethnic origin, income, physical and mental ability, or place of residence; and
- ~~(c) Project diversity~~— a variety of different interests and disciplines within the eligible projects should be served and which also may include, but not be limited to, the following:
  - (i) service to local communities or counties, multicounty regions, and the state;
  - (ii) service to urban and rural populations;
  - (iii) special projects, operational support, and capital expenditures and ~~endowment development; and~~
  - (iv) single sponsors and those representing coalitions of a number of organizations.
- ~~(d) Cost diversity~~— ~~consideration will be given to projects requesting both large and small amounts of funding.~~

AUTH: 22-2-303, MCA

IMP: 22-2-302, 22-2-306, MCA

4. The department proposes to repeal the following rules:

10.111.705 CHALLENGE GRANTS FOR PERMANENT ENDOWMENT DEVELOPMENT, is found on page 10-1355 of the Administrative Rules of Montana.

AUTH: 22-2-303, MCA

IMP: 22-2-301, 22-2-308, 22-2-309, MCA

10.111.708 INCREMENTAL DISBURSEMENTS OF GRANTS, is found on page 10-1360 of the Administrative Rules of Montana.

AUTH: 22-2-303, MCA

IMP: 22-2-305, 22-2-306, MCA

5. STATEMENT OF REASONABLE NECESSITY: Grant application requirements have changed and the rules must be changed to be consistent with the new requirements. When the administrative rules were first established in 1991, the average Cultural Trust grant was \$18,200. In the current biennium, the average grant is \$8,000. This decrease of 56% in the average is due to the decrease in interest earnings on the trust. Plus, in six of the last seven biennia, there has been an additional shortfall, which has further reduced the amount of funds actually received by grantees. The applications for the current biennium were the first to be completed and submitted online. The Montana Arts Council conducted an extensive survey of applicants following the initial online application process and the revisions recommended by the constituency are reflected in these rule changes, which simplify the process. Many of the applications are from rural and all-volunteer organizations which do not have professional grant writing staff and this rule change will aid them by streamlining the application process.

ARM 10.111.704 has been amended for clarity only. Subsection (1)(c)(iii) has been moved up to (c)(i) in order to be consistent with the match requirement order in the other grant categories. Financial information requested has been simplified and standardized to make the application process easier and to allow the advisory committee to review that information in a manner that is more even and consistent.

6. STATEMENT OF FISCAL IMPACT: These rule changes have no fiscal impact.

7. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kristin Burgoyne, Montana Arts Council, P.O. Box 202201, Helena, Montana, 59620-2201; fax (406) 444-6548; or e-mail mac@mt.gov, and must be received no later than 5:00 p.m., April 19, 2012.

8. Ann Gilkey, Chief Legal Counsel for the Office of Public Instruction, has been designated to preside over and conduct this hearing.

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

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

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

/s/ Ann Gilkey  
Ann Gilkey, Chief Legal Counsel  
Office of Public Instruction  
Rule Reviewer

/s/ Arlynn Fishbaugh  
Arlynn Fishbaugh, Executive Director  
Montana Arts Council

Certified to the Secretary of State March 12, 2012.



BEFORE THE BOARD OF PUBLIC ACCOUNTANTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of )  
ARM 24.201.501 education )  
requirements, 24.201.528 out-of-state )  
applicants, 24.201.537 retired status, )  
24.201.1108 profession monitoring, )  
24.201.2106, 24.201.2108, )  
24.201.2114, 24.201.2120, )  
24.201.2121, and 24.201.2124, )  
24.201.2136, 24.201.2137, )  
24.201.2138, and 24.201.2139, )  
24.201.2145, 24.201.2148, and )  
24.201.2154 renewal and continuing )  
education, and the repeal of ARM )  
24.201.2105 advisory committee, )  
24.201.2146 continuing education )  
reporting for permit to practice, and )  
24.201.2161 reinstatement )

NOTICE OF PUBLIC HEARING ON  
PROPOSED AMENDMENT AND  
REPEAL

TO: All Concerned Persons

1. On April 16, 2012, at 1:30 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Public Accountants (board) no later than 5:00 p.m., on April 11, 2012, to advise us of the nature of the accommodation that you need. Please contact Amy Maracle, Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2389; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov).

3. GENERAL REASONABLE NECESSITY: As part of a periodic review, the board is proposing revisions throughout their administrative rules. Some of the proposed amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete past implementation dates and unnecessary or redundant sections, correct internal citations to statutes and rules, and amend rules and catchphrases for accuracy, consistency, simplicity, better organization, and ease of use. Authority and implementation cites are being amended throughout to

accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority.

The board is amending several rules in subchapter 21 regarding continuing professional education (CPE) requirements and reporting to simplify processes and address years of confusion over these processes. Licensees have repeatedly asked that the board change the rolling three-year CPE period to align with the calendar year. Because most states have CPE on the calendar year, this change will simplify the process for individuals licensed in multiple states. Additionally, CPE tracking software used by many firms is also based on the calendar year. The board is also amending the rules to no longer require CPE reporting for licensees. Following amendment, licensees will be required to obtain the mandatory CPE during their three-year period, and attest to the completion at renewal. The board will only require the reporting of CPE courses or credits when licensees are required under professional monitoring, are selected during the random audit, or to prove compliance for license renewal, reactivation, or transferral.

Accordingly, the board has determined it is reasonably necessary to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.201.501 EDUCATION REQUIREMENTS (1) and (2) remain the same.

(3) An applicant ~~submitting~~ who has examination scores for an examination administered in November 1997 or thereafter, or an applicant whose approved application for examination has expired and is making reapplication for an examination after November 1997, or an applicant who applies by transfer of grades ~~after the~~ who has examination scores for an examination administered in November 1997 ~~examination or thereafter~~, must have completed at the time of applying, to sit for the exam:

(a) at least 24 semester hours (36 quarter hours) of upper division (an upper division course is normally defined as a course taken at the junior or senior level and would exclude introductory courses in accounting and economics) or graduate level accounting courses including at least above the introductory level, to include one course in each of the following subject areas to be approved to sit for the examination:

(a) through (c) remain the same, but are renumbered (i) through (iii).

~~(d) (iv)~~ management accounting; and

~~(e) (b)~~ (b) at least 24 semester hours (36 quarter hours) in nonaccounting, general business related courses. Examples of business related courses include information systems, business law, finance, economics, marketing, ethics, organizational behavior, quantitative applications in business, and communication skills;

~~(f) (4)~~ Subsequent to successful passage of the examination, the candidate applicant, to be certified or licensed as a public accountant, must have:

(a) graduated from a an accredited college or university accredited to offer with a baccalaureate degree; and

~~(i) with an accounting concentration or its equivalent as determined by the board; and~~

~~(ii) (b) with successfully completed at least 150 semester hours (225 quarter hours) of credit, including those earned toward the baccalaureate degree or its equivalent.~~

~~(4) (5) An accredited school is one that is accredited by the American assembly Assembly of collegiate schools Collegiate Schools of business Business, or one of the following regional accrediting agencies:~~

~~(a) through (f) remain the same.~~

~~(5) (6) Graduates of Any foreign-obtained schools shall have their education must be evaluated by an advisory evaluation service specified by the board or the Foreign Academic Credentials Service, Inc. (FACS) in reference to Montana's education requirements.~~

~~(7) Applicants who did not sit for the exam as a Montana candidate must submit official transcripts for all education to NASBA's CPA Examination Services (CPAES) for evaluation in reference to Montana's education requirements.~~

~~(8) Montana exam candidates should be aware that the requirements outlined in (3) do not meet the requirements to obtain initial licensure in several U.S. jurisdictions and may inhibit the individual from seeking initial licensure in other U.S. jurisdictions if not licensed in Montana first.~~

~~(6) (9) One quarter unit or hour of credit is equivalent to two-thirds of a semester unit or hour.~~

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-50-203, 37-50-302, 37-50-303, 37-50-305, MCA

REASON: The board is amending this rule to address questions from licensees and clarify the education requirements necessary to sit for the exam and to become licensed. The board is specifying the quarter-hour equivalents to semester hours as some schools still award credit on quarter-hours and the board staff continues to receive questions on these equivalents.

The board is removing from (6) the board's discretion to require a foreign education review by any service other than the Foreign Academic Credentials Service (FACS). The board has never used another service and is confident in reviews performed by FACS.

The board is adding (7) to specify that applicants who did not sit for the exam as Montana candidates must have their transcripts evaluated by the same organization that evaluates Montana exam candidates during the exam application process. The board concluded that this review is necessary to assure consistency and to remove liability from board staff for transcript evaluations.

The board determined it is reasonably necessary to add (8) and provide information to Montana exam candidates who may seek initial licensure in a state other than Montana. Some candidates have been unaware of the differences in exam requirements between states and the board is attempting to raise awareness.

24.201.528 LICENSURE OF OUT-OF-STATE APPLICANTS SEEKING A MONTANA CERTIFICATE, LICENSE, OR PERMIT (1) through (3)(a) remain the same.

(b) the applicant has had five years' experience in the practice of public accountancy after passing the examination upon which the applicant's certificate or license was based, within the ten years immediately preceding the application; and

(c) remains the same.

(d) the applicant has fulfilled the requirements of continuing professional education established under ~~37-1-306 and 37-50-314~~, MCA ARM 24.201.2106.

(4) Incomplete applications for licensure or certification ~~or transfer of grades~~ that are older than 12 months, will be considered invalid and void. The applicant will be required to reapply and pay another fee.

AUTH: 37-50-203, 37-50-309, MCA

IMP: 37-1-304, 37-1-306, 37-50-309, 37-50-311, 37-50-312, 37-50-313, 37-50-314, 37-50-325, MCA

REASON: The board is striking "transfer of grades" from (4) since the transfer is included as part of the application process, and the board intends for license applications to remain "live" for a total of 12 months.

24.201.537 RETIRED STATUS (1) The holder of a certificate or license who is fully retired from active employment ~~will be exempt from paying annual renewal fees upon submitting in the practice of public accounting as defined in 37-50-101, MCA, may submit a retired status request form to the board. Upon and receiving approval of the request, the individual will be exempt from paying annual renewal fees. Holders of a permit to practice in retired status will also be exempt from CPE requirements and may use the designation "CPA (Retired)."~~

(2) An individual on retired status may apply for their certificate, license, or permit to practice ~~renewal to be reactivated~~ within two years of the ~~renewal date their license was placed on retired status~~ by complying with the all renewal requirements. A retired license that is not ~~renewed~~ reactivated within two years ~~from of the renewal date the license was placed on retired status~~ automatically terminates. ~~An individual whose license has terminated may apply for reinstatement of a certificate, license, or permit to practice by complying with the requirements pursuant to ARM 24.201.536~~ In accordance with 37-1-141, MCA, once a license has terminated, it may not be reactivated and a new original license must be obtained through application, and all current licensing requirements must be met.

(3) ~~Montana holders~~ Holders of Montana certificates, licenses, or permits who avail themselves of practice privileges in other jurisdictions, ~~or who are practicing public accounting as defined in 37-50-101, MCA, in other jurisdictions in which they are licensed,~~ may not place ~~the~~ their Montana certificate, license, or permit on retired status ~~while using the practice privilege.~~

AUTH: 37-1-131, 37-50-203, MCA

IMP: 37-1-131, 37-1-141, 37-50-101, 37-50-325, MCA

REASON: The board is amending this rule to correct terminology and align the processes for retired status with the requirements in 37-1-141, MCA, regarding termination and reactivation of licenses. It is reasonably necessary to amend (1) to clarify that individuals on retired status are exempt from CPE requirements. Although not a new exemption, it was not previously set forth in rule.

The board is also amending (3) to clarify that anyone practicing in other jurisdictions may not be placed in retired status.

24.201.1108 ALTERNATIVES AND EXEMPTIONS (1) A practice unit ~~which has undergone an~~ enrolled in the AICPA or board-sanctioned peer review program is exempt from the board's profession monitoring program (PMP), provided a peer review has been completed within the three preceding calendar years must file a copy of its peer review report, including letter of comments (if any), letter of responses (if any), and acceptance of the review report by the administering entity. Firms may meet this requirement by participating, the report did not receive a peer review rating of "fail," and the practice unit fully participated in the Facilitated State Board Access (FSBA) program. Fully participating in the FSBA means board staff must be able to retrieve the peer review report, letter of response (if any), and acceptance letter from the administering entity.

(2) Alternative peer reviews (such as legislative audits of government entities) may be sanctioned by the board, which may also exempt a practice unit from the board's PMP.

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

AUTH: 37-50-203, MCA

IMP: 37-50-203, MCA

REASON: Following numerous requests by licensees and firms for clarification, the board is amending this rule regarding the process to exempt practice units from participating in the PMP. The amendments will streamline the process and result in less paperwork submitted by these practice units.

24.201.2106 BASIC REQUIREMENT (1) ~~Continuing education is accrued in a rolling three-year period that requires annual reporting. The annual reporting year begins July 1 and ends June 30 of every year. Any rolling three-year accrual period ends on June 30, immediately preceding the annual permit renewal deadline of December 31. Applicants for a permit to practice must complete 120 hours of acceptable continuing education credit in every three-year period, except as otherwise provided under 37-50-314, MCA, and ARM 24.201.2154 and 24.201.2155.~~

~~(2) At least two hours of the 120 hours of acceptable continuing education credit must consist of knowledge and the application of ethics or the codes of professional conduct of certified public accountants and licensed public accountants.~~

~~(3) Applicants who have already met the basic requirement by the end of any June 30th reporting period may elect to have excess continuing education hours, taken during the immediately preceding months of May and June, apply to the subsequent reporting period.~~

~~(4) Applicants who have not completed their basic requirements by the end of any June 30th reporting period may elect to have qualified continuing education hours, taken during the immediately following months of July and August, apply to the previous reporting period.~~

~~(5) Course credit hours may be split in order to carry over or carry back eligible credit.~~

~~(6) The implementation date of the continuing education requirement is three years from June 30, following an individual's initial issuance of a permit to practice.~~

(1) Holders of a permit to practice are required to have 120 hours of continuing professional education (CPE) with a subset of two hours in ethics in any rolling three-year period, except as otherwise provided under ARM 24.201.2108 and/or 24.201.2154.

(a) Beginning with the 2012 period, the rolling three-year period will be based on the calendar year. To make the change from fiscal year to calendar year, licensees will be able to count CPE obtained between July 1, 2011 and December 31, 2012, toward the 2012 year.

(2) Holders of a permit to practice will be required to affirm their compliance with the basic requirement upon annual renewal. This affirmation will be for the three calendar years immediately preceding the renewal year.

(3) Applicants for a permit to practice who have never been licensed in any jurisdiction must meet the basic requirement of CPE by December 31 of the third year following the year of the initial issuance of the Montana permit (example: If an individual received their permit to practice in 2010, they must meet the basic CPE requirement by December 31, 2013).

(a) Applicants for a permit to practice who are transferring into Montana via licensure in another jurisdiction, who have been licensed for less than three years, are granted the same time period in which to meet Montana's basic CPE requirement, based on their original licensure date in the other jurisdiction.

(b) Applicants for a permit to practice who are transferring into Montana via licensure in another jurisdiction, who have been licensed for more than three years, must submit proof of having met Montana's basic CPE requirement at the time of application.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, MCA

24.201.2108 WHO MUST COMPLY - GENERAL ~~(1) All persons who are issued~~ Holders of a Montana permit to practice must comply with the continuing education requirements, unless they have been excepted as provided by granted an exception as outlined in ARM 24.201.2112 or 24.201.2154.

~~(2) remains the same.~~

AUTH: 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, 37-50-314, 37-50-325, MCA

24.201.2114 OUT-OF-STATE APPLICANTS SEEKING A MONTANA PERMIT TO PRACTICE - CONTINUING EDUCATION REQUIREMENT (1) An

individual, who holds a valid and unrevoked certified public accountant certificate or public accountant license issued by any jurisdiction, and who makes application under the appropriate provisions of the statutes for a certificate or license in this state, and who receives a certificate or license from this state, shall be required to comply with the basic requirement before being issued a permit to practice in this state. ~~Compliance will be reported on a form provided by the board.~~

~~(2) If the individual holds a valid and unrevoked permit to practice public accounting, if one is issued by such other jurisdiction, or was otherwise allowed to practice public accounting in such other jurisdiction, and cannot meet the basic requirement at the time of application for a permit to practice, the individual must request that the public accounting regulatory entity of such other jurisdiction submit in writing, directly to the board, verification that the individual was allowed to practice public accounting in that other jurisdiction. Upon acceptance of the verification by the board, the individual will be issued a permit to practice until the permit year following the June 30 following the individual's application. The individual must complete the basic requirement by the June 30 following their application.~~

~~(3) Except that such individual's basic continuing education requirements for purposes of this rule shall be no greater than if the individual's initial registration in such other jurisdiction was made in this state as explained in ARM 24.201.2106.~~

AUTH: 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, MCA

24.201.2120 STANDARDS FOR FORMAL CONTINUING EDUCATION PROGRAMS, PROGRAMS WHICH QUALIFY, AND ACCEPTABLE SUBJECT MATTER AND PROGRAMS

~~(1) To protect the public and to ensure that practitioners participate in learning activities that maintain or increase their professional competence, the board has adopted standards for continuing education that establish a framework for the development, presentation, measurement, and reporting of continuing education programs to ensure that accounting professionals receive the quality continuing education necessary to satisfy their professional obligation to serve the public interest, the board has adopted standards for continuing professional education.~~

~~(2) A program qualifies as acceptable continuing education if it is a formal group or self-study program of learning, which contributes directly to the professional competence of an individual permitted to practice public accounting, and such program meets the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in the most recently issued version of the Statement of Standards for Continuing Professional Education (CPE) programs issued jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA) on January 19, 2001 as adopted by reference in ARM 24.201.2121, or such other educational standards as may be established from time to time by the board.~~

~~(3) The following general are examples of generally acceptable subject matters matter are acceptable provided they contribute to the basic professional knowledge and competence of the individual and meet the minimum standards of quality or development and presentation and of measurement and reporting of~~

credits set forth in the ~~Statement of Standards for Continuing Professional Education (CPE) programs issued jointly by the AICPA and NASBA - this list is not all-inclusive:~~

(a) through (4) remain the same.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, 37-50-314, MCA

24.201.2121 STANDARDS FOR CPE PROGRAM DEVELOPMENT - PRESENTATION AND MEASUREMENT (1) The board adopts and incorporates by reference the most recently issued version of the Statement on Standards for Continuing Professional Education (CPE) ~~program~~, as issued jointly by the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA), January 12, 2012 ~~on January 19, 2004~~, or such other education standards as may be established from time to time by the board.

(2) The standards incorporated by reference are available at the professional resources or publication offices at the respective ~~web site~~ web sites:

(a) and (b) remain the same.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, 37-50-314, MCA

24.201.2124 STANDARDS FOR CPE REPORTING (1) Participants in group or self-study programs must ~~document~~ obtain documentation of their participation including (i.e. a certificate of completion or other correspondence from the sponsor). Documentation must include the following information:

(a) through (d) remain the same.

(e) location; ~~and~~

(f) number of continuing education credit hours granted; ~~and~~

(g) NASBA Registry ID or NASBA QAS Sponsor ID (if applicable).

(2) Documentation must be retained for not less than five years.

~~(3)~~ (3) The sponsor of group or self-study programs ~~should~~ shall retain evidence of an individual's participation in a group or self-study program for not less than five years. Pertinent information includes:

(a) through (f) remain the same.

(g) number of contact hours/continuing education credit hours granted.

~~(3)~~ (4) For courses taken for academic credit in universities and colleges, evidence of satisfactory completion of the course and receipt of academic credit will be sufficient (i.e. transcripts); for noncredit courses, a statement of the hours of attendance, signed by the instructor, must be obtained by the individual.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The board is amending this rule to require participants in self-study programs obtain and retain their NASBA registry or QAS provider ID numbers, if



applicable. If they cannot provide these numbers when audited, they will only receive credit for half the course hours.

24.201.2136 CREDIT HOURS GRANTED - GROUP STUDY PROGRAMS

(1) Continuing education credit will be given with a minimum of 50 minutes constituting one hour. One-half continuing education credit increments (equal to a minimum of 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(2) For university or college courses, each semester unit of credit shall equal 15 hours toward the requirement. A quarter unit of credit shall equal ten hours.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, MCA

24.201.2137 CREDIT FOR FORMAL SELF-STUDY PROGRAMS

(1) ~~Interactive Formal~~ self-study programs shall receive continuing education credit equal to the average completion time amount granted by the sponsor, if the sponsor is ~~recognized and approved by NASBA's CPE quality assurance service (referred to as a NASBA Registry or NASBA QAS sponsor) or NASBA's national registry of CPE sponsors (referred to as a NASBA registry sponsor)~~. An interactive self-study program is designed to use interactive learning methodologies that ~~simulate a classroom learning process that provides significant ongoing, interactive feedback to the participant regarding the participant's learning progress~~. These programs are calculated on a 50-minute hour.

(a) All other ~~interactive and noninteractive~~ formal self-study programs receive continuing education credit equal to ~~one-half of the average completion time credit amount granted by the sponsor~~. These programs are calculated on a 100-minute hour.

(2) Individuals claiming credit for such formal self-study courses are required to obtain evidence of satisfactory completion ~~of the course~~ from the program sponsor as outlined in ARM 24.201.2124.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, MCA

24.201.2138 CREDIT FOR SERVICE AS LECTURER, DISCUSSION LEADER INSTRUCTOR, SPEAKER, OR REPORT REVIEWERS REVIEWER

(1) ~~Instructors, discussion leaders~~ Lecturers, instructors, and speakers may claim continuing education credit for both preparation and presentation time to the extent the activities maintain or increase their professional competence and qualify for continuing education credit for participants. Credit may be claimed for actual preparation time up to two times the class credit hours for the first time the class is presented. The maximum credit for such preparation and teaching shall not exceed 50 percent (or 60 hours) of the basic period requirement in any rolling three-year period.

(2) Continuing education credit may be claimed for serving as a report reviewer under the board's profession monitoring program established in ARM

24.201.1101, or under other structured report review programs to be approved on a case-by-case basis by the board. ~~One~~ Once approved, one hour of credit shall be granted for every hour spent reviewing reports. The maximum credit for such reviews shall be no more than 16 hours in any given fiscal calendar year reporting period. ~~Such credits shall qualify towards the requirement related to reporting on financial statements in ARM 24.201.2106(2).~~

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA  
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

24.201.2139 CREDIT FOR PUBLISHED ARTICLES, BOOKS, ETC.

(1) Credit may be claimed for published articles and books provided they contribute to the professional competence of the individual. Credit for preparation of such publications may be claimed on a self-declaration basis, not to exceed 25 percent (or 30 hours) of the basic requirement, unless exceptional circumstances justify greater credit. The final amount of credit ~~so~~ awarded will be determined by the board on a case-by-case basis. ~~Credit for preparation of such publications may be claimed on a self-declaration basis not to exceed 25 percent of the basic requirement, unless exceptional circumstances justify greater credit.~~

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA  
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

24.201.2145 REPORTING REQUIREMENTS (1) ~~On or before the July 31 after the end of the three-year reporting period, permit holders shall have reported credit hours to the board indicating that they have met the requirements for that reporting period~~ Holders of a permit to practice are required to affirm their compliance with the basic CPE requirement as outlined in ARM 24.201.2106, upon annual renewal. This affirmation will be for the three calendar years immediately preceding the renewal year.

(2) ~~Persons who use the two-month carry-back provision of ARM 24.201.2106(4) shall file their reporting forms by July 31, listing the course(s) they are planning to attend or complete. If the course(s) listed are not completed, they must notify the board office in writing immediately no later than August 31. Such notification(s) shall explain why the course(s) were not completed and provide a plan to meet the continuing education requirements~~ Reporting of actual courses/credits is not required, unless the CPE is dictated by the board as a result of the profession monitoring program, the individual is selected for a random CPE audit as outlined in ARM 24.201.2148, or the individual must otherwise prove compliance for licensure purposes (i.e. renewing an expired license, reactivating a license, transfer of license).

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA  
IMP: 37-1-306, 37-50-203, 37-50-314, MCA

24.201.2148 VERIFICATION (1) The board will verify continuing education information submitted by individuals compliance with the basic CPE requirement by annual random audit of up to 50 percent of licensees.

(a) Licensees notified that they have been randomly selected for an audit must comply with the deadline for submitting documentation.

(b) Only documentation as outlined in ARM 24.201.2124, in support of the basic CPE requirement, shall be submitted. Individuals may submit documentation of up to 150 hours if they so choose, to make sure the basic requirement is substantiated in the audit.

~~(2) If an application is not approved, the individual will be so notified in writing and may be granted a period of time by the board, in which to correct the deficiencies noted. The board will audit the CPE reporting form and supporting documentation to verify completion of the basic requirement~~ The board will review all cases in which compliance with the basic CPE requirement could not be verified by staff.

~~(3) If specific CPE is recommended as a result of the profession monitoring program reviews, the board will audit the CPE supporting documentation to verify completion of the appropriate subject matter and number of credit hours.~~

~~(4) Out of state applicants licensed in another jurisdiction applying for a permit to practice in this state must submit a CPE reporting form documenting compliance with CPE requirements with their application. The board may verify or audit CPE submitted by out of state applicants on a case-by-case basis.~~

~~(5) Applicants seeking reactivation or reinstatement of a permit to practice must submit a CPE reporting form and supporting documentation to be verified by the board. The CPE requirements of ARM 24.201.2106, may be met in the three years immediately preceding the application for reactivation or reinstatement.~~

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-131, 37-1-306, 37-50-203, 37-50-314, MCA

REASON: The board is amending this rule to align with proposed changes to ARM 24.201.2124 and 24.201.2145. The board is also specifying that the board may randomly audit up to 50% of renewed licensees, in accordance with 37-1-131, MCA.

24.201.2154 EXTENSION OR HARDSHIP EXCEPTION (1) The board has authority to grant an extension of time in order to complete the basic CPE requirement or to grant a written hardship exception for a specific period of time, for reasons of individual hardship including health, military service, or inaccessibility to programs (i.e. health or military service).

(a) To request an extension or exception, an individual must submit the appropriate form and fees. The board will review requests on a case-by-case basis.

AUTH: 37-1-319, 37-50-201, 37-50-203, MCA

IMP: 37-1-306, 37-50-203, 37-50-314, MCA

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

24.201.2105 ADVISORY COMMITTEE

AUTH: 37-50-201, 37-50-203, MCA  
IMP: 37-50-203, 37-50-314, MCA

REASON: The board determined it is reasonably necessary to repeal this rule as such an advisory committee has not been necessary for many years and is not anticipated to be utilized in the future.

24.201.2146 CONTINUING EDUCATION REPORTING FOR PERMIT TO PRACTICE

AUTH: 37-50-201, 37-50-203, MCA  
IMP: 37-50-203, 37-50-314, MCA

REASON: The board is repealing this rule to conform with the proposed changes to ARM 24.201.2145, and because all other information is already included in ARM 24.201.2124.

24.201.2161 REINSTATEMENT

AUTH: 37-50-201, 37-50-203, MCA  
IMP: 37-50-203, 37-50-314, MCA

REASON: The board determined it is reasonably necessary to repeal this rule because the reinstatement provisions are adequately set forth in 37-1-314, MCA.

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov), and must be received no later than 5:00 p.m., April 24, 2012.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at [www.publicaccountant.mt.gov](http://www.publicaccountant.mt.gov). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Public Accountants, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to [dlibsdpac@mt.gov](mailto:dlibsdpac@mt.gov); or made by completing a request form at any rules hearing held by the agency.

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

10. Anne O'Leary, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PUBLIC ACCOUNTANTS  
JACK MEYER, CPA, CHAIRPERSON

/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 March 12, 2012

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

In the matter of the amendment of )  
ARM 24.210.301 definitions, )  
24.210.401 fee schedule, 24.210.426 )  
trust account requirements, )  
24.210.430 internet advertising rules, )  
24.210.601, 24.210.602, 24.210.604, )  
24.210.610, 24.210.611, 24.210.624, )  
24.210.625, 24.210.635, 24.210.641, )  
24.210.660, 24.210.661, 24.210.667 )  
and 24.210.674 brokers and )  
salespersons, 24.210.801, )  
24.210.803, 24.210.805, 24.210.807, )  
24.210.809, 24.210.812, 24.210.828, )  
24.210.829, 24.210.835 and )  
24.210.840 property management, )  
and the adoption of NEW RULE I )  
public participation, and NEW RULES )  
II and III course provider )

TO: All Concerned Persons

1. On April 17, 2012, at 9:00 a.m., a public hearing will be held in room 439, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Realty Regulation (board) no later than 5:00 p.m., on April 13, 2012, to advise us of the nature of the accommodation that you need. Please contact Barb McAlmond, Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2325; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2323; e-mail [dlibsdrre@mt.gov](mailto:dlibsdrre@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: Following an in-depth biennial rule review by the board and a volunteer task force as required by 2-4-314, MCA, the board is proposing revisions throughout the administrative rules. Some of the proposed amendments are technical in nature, such as renumbering or amending punctuation within certain rules following amendment and to comply with ARM formatting requirements. Other changes replace out-of-date terminology for current language and processes, delete unnecessary or redundant sections, and amend rules for accuracy, consistency, simplicity, better organization, and ease of

use. The board has combined amendments over time into this single proposal notice for efficiency in processes and cost savings to the board and licensees.

The 2011 Montana Legislature enacted Chapter 79, Laws of 2011 (Senate Bill 256), an act revising laws relating to real estate brokers and salespersons to clarify the rights and obligations of a supervising broker. The bill was signed by the Governor on March 25, 2011, and became effective October 1, 2011. The board is amending certain rules to align processes and terminology with the 2011 statutory changes and further implement the legislation regarding the temporary transfer of salesperson supervision.

Authority and implementation cites are amended throughout to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority. Accordingly, the board has determined that reasonable necessity exists to generally amend certain rules at this time. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

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

24.210.301 DEFINITIONS The terms used in this chapter shall have their common meaning as used in the real estate industry, and, unless the context otherwise requires, the following meanings shall also apply:

(1) remains the same.

(2) "Advertising" means information, in whatever form, used to promote real property for sale, lease, rent, exchange, or purchase, or to promote the brokerage or sales services of a licensee, except that the dissemination of property data to an individual prospective buyer or seller at the individual's request shall not be deemed advertising for the purpose of these rules.

(3) and (4) remain the same.

(5) "Agricultural," "farm," and "ranch" shall include real estate parcels over ~~30~~ 40 acres in size, principally used for, or capable and intended for use in, the production of plant or animal crops.

(6) remains the same.

(7) "Cancellation" is the period of time following the release of the salesperson license from the supervising broker, and prior to transfer of the license to another broker, or placed on inactive status.

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

(10) "Course provider" is a board-approved entity that is responsible to the board for the administration of approved education courses in accordance with board laws and rules.

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

~~(40)~~ (12) "Distance education" is a course or courses in which the instruction does not take place in a traditional classroom setting, but rather, through other media where the teacher and student are separated by distance and sometimes by time.

(13) "Electronic records" may include checks and bank statements.

(14) "Entry-only listing" is a listing in which the seller and the seller's agent have agreed to limit the seller agent's involvement in the transaction process.

(11) remains the same, but is renumbered (15).

(16) "Incapacity" as used in ARM 24.210.601, means being in a condition as a result of accident or illness that renders the person wholly incapable of conducting the business of a supervising broker. A voluntary or anticipated incapacity or an extended absence from the supervising broker's office is not an incapacity.

~~(12)~~ (17) "Internet" means the Internet, the World Wide Web, or Internet-based electronic information distribution networks, and any derivative delivery systems or evolutions of such delivery systems that may be connected to individual computers, terminals, and other consumer electronic interface devices through which information is delivered via computer servers connected via phone lines or other cable, wire, fiber, wireless, or other analogous linkages to a computer, computer network or networks, including, but not limited to, Web web pages, e-mail, news groups, discussion lists, bulletin boards, instant messaging, chat rooms, voice over net, multimedia advertising, links, and/or banner advertisements.

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

~~(14)~~ (19) "Licensee" shall include anyone who has been issued a license by the board or who has made application for a license from the board. A former licensee is subject to disciplinary action for conduct engaged in during the period in which they were licensed. For disciplinary purposes, "licensee" also includes anyone with a lapsed or expired license.

~~(15)~~ (20) "Licensee identification" as used in this chapter means a written disclosure of the licensee's name, license number, and identifying that the advertisement is made by a real estate licensee or by a brokerage company and that the advertisement is made by a real estate licensee.

~~(16)~~ (21) "Principal" shall include the seller or buyer with whom the agent has a contract in a real estate transaction. It shall include a property owner with whom the agent has a contract in property management activity.

(17) remains the same, but is renumbered (22).

(23) "Routine application" is a complete application, which shows compliance with board rules and no disciplinary issues. All other complete applications are nonroutine.

(18) remains the same, but is renumbered (24).

~~(19)~~ (25) "Supervising broker" is a broker who is responsible for supervision and training of one or more licensed salespersons, pursuant to 37-51-302, MCA.

(20) and (21) remain the same, but are renumbered (26) and (27).

~~(22)~~ (28) "Transaction" means a listing, sale, or lease, or exchange.

(29) "Trust funds" are all monies belonging to others and accepted by a licensee, while acting in the capacity of a licensee.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-101, 37-1-131, 37-1-136, 37-51-103, 37-51-202, 37-51-204, 37-51-301, 37-51-302, 37-51-303, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-315, 37-51-321, 37-51-324, 37-51-401, MCA



REASON: The board is amending the definition of "advertising" to include the ability of an agent, upon request from a seller, to disseminate property data information without being required to comply with advertising requirements for property listed by other licensees, or not listed at all. Current rules allow a licensee to make such dissemination of information to a buyer, but not to a seller. The board concluded there is no need to distinguish between buyers and sellers in the provision of property data information, as sellers also need this information. Often licensees need to provide property data information as a way to educate sellers on current market conditions and to outline what a seller might expect in the current market conditions. This dissemination of information is intended to benefit clients and improve the services of the licensee. The board does not intend for general distribution of this information and it should not be considered advertising.

It is reasonably necessary to amend the definition of "agricultural" and increase the number of acres from 30 to 40, that qualify land parcels as agriculture. This amendment is necessary to mirror the qualifying number of acres under the small tract trust indenture requirements, which was previously amended to 40 acres.

The board is adding the definition of "cancellation" to address confusion and questions as to what triggers a "cancelled" status for a licensee and to align with statutory requirements in 37-51-309, MCA. A "cancelled" license is not disciplinary in nature, although some licensees or members of the public have mistakenly interpreted it that way.

The board is defining "course provider" to align with proposed New Rules II and III in this notice, that set forth requirements for course provider registration.

It is reasonably necessary to establish a definition of "electronic records" to conform to modern accounting practices. Because it is common for modern trust account records to be held electronically, the board is amending existing rules to allow certain additional electronic documents to be used for trust accounts. This change will allow licensees to use current business practices of maintaining electronic documents to fulfill their trust accounting requirements. The board does not intend for the new definition to limit all records to electronic records and will continue to allow submission of paper records.

The board is adding the definition of "entry-only listing" to clarify a new business model, which has come into practice in recent years. In an entry-only listing, the agent and the client have agreed to services, which are something less than the full services formerly required of and provided by agents. The board does not allow such reduction in services to be unlimited and some minimal services are still required under Montana law. It is also necessary to define this term to align with the amendments to ARM 24.210.641(5)(av), which are proposed to clarify the statutory and rule requirements an entry-only listing agent must comply with when engaged in an entry-only listing.

In conjunction with the 2011 passage of SB 256, the board determined it is reasonably necessary to add the definition of "incapacity." In adopting new rules to allow for temporary transfer of salesperson supervision, the board anticipates there will be both expected and unexpected reasons for transfer of supervision, including when a broker unexpectedly becomes incapacitated. This term will identify the unexpected condition that would require temporary supervision of salespeople by a supervising broker, other than the salesperson's supervising broker of record. The

board does not intend for this term to include anticipated incapacities or absences such as a planned surgery or vacation.

It is reasonable and necessary to amend the definition of "licensee" to eliminate recent confusion by some who did not understand that a lapsed or expired license is still considered a license that may be subject to board discipline. This definition will more clearly reflect the statute, 37-1-141, MCA, allowing boards to take disciplinary action against individuals with lapsed or expired licenses.

In response to a number of recent questions concerning identification requirements in advertising, the board is amending the definition of "licensee identification" to clarify these requirements. The purpose of license identification is to ensure that, as a matter of public protection, the public, consumers, and other licensees know who is offering the real estate services. Therefore, when advertising and soliciting business from the general public, the advertisement must clearly identify the licensees, or the advertisement must identify that it is being offered by a brokerage. This amendment coincides with proposed amendments to ARM 24.210.641(5)(ag).

The board is amending the definition of "principal" to include the principal in a property management transaction. The current definition only contemplates a principal relationship with a buyer or seller, but a principal relationship can also exist with a property owner in the case of property management.

The board determined it is reasonably necessary to establish a definition of "routine application." Under 37-1-101, MCA, the department is required to issue and renew routine licenses as defined by the board. The board had not previously established a definition in rule, and this new definition will provide direction to department staff as to which licenses the department is authorized to issue without requiring board review.

The board is establishing a definition of "trust funds" to include all money that belongs to someone else and is received by a licensee during the course of their licensed activity. Those trust funds may be held by the broker or property manager in a trust account. The parties to a real estate transaction can designate an alternative holder, but they are still considered trust funds.

24.210.401 FEE SCHEDULE (1) through (7) remain the same.

(8) Broker change of place of business or each salesperson	
change of broker <u>or transfer of cancelled license</u>	45
<u>(9) transfer of supervision to a single temporary supervising broker</u>	<u>25</u>
<u>(10) late filing of temporary supervising broker notification</u>	<u>50</u>
(9) remains the same, but is renumbered (11).	
<del>(10)</del> <u>(12) Placing active <u>or cancelled</u> license on inactive status</u>	10
(11) through (16) remain the same, but are renumbered (13) through (18).	
<del>(17)</del> <u>(19) Predetermination, equivalency, or waiver application fee</u>	50
<del>(18)</del> (20) Each additional course <del>hour-option</del> <u>hour option</u> from one course outline	20
<u>(21) Individual CE request application (per course)</u>	<u>25</u>
<u>(22) Late filing of individual CE request application (per course)</u>	<u>100</u>
<u>(23) Instructor/course development course</u>	<u>\$100 per course</u>
(19) remains the same, but is renumbered (24).	

AUTH: 37-1-131, 37-1-134, 37-51-203, MCA

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

REASON: The board determined it is reasonably necessary to amend (8) to specify that a salesperson transferring or inactivating a license that has been returned to the board by a supervising broker for cancellation is required to pay either the supervision change or the inactivation fee. Although the process is not new and those fees are currently collected from licensees in "cancelled" license status, this rule never clearly defined the requirement to pay those fees.

The board is adding (9) to establish a fee to cover costs associated with tracking the temporary transfer of salespeople from their broker of record to a temporary supervising broker. This transfer is for a specific period of time, and will involve the transfer of most or all of a broker's salespeople to a temporary supervisor on one transfer. It is also necessary to add (10) to set a late fee for failing to timely file a temporary change of supervision. The late fee is intended as a punitive fee that will deter late filing of temporary changes and as such, is not commensurate with the associated costs.

The board is amending (19) to add a fee for equivalency and waiver applications as both are unique applications that require additional administrative processing time and board review to determine if the applicant meets the licensing requirements via alternative means. Under 37-1-134, MCA, all boards must set and maintain fees commensurate with the related program costs and this proposed fee will cover the additional expenses incurred in the processing of these applications.

It is reasonably necessary to add (21) and set a fee for individual continuing education (CE) request applications which allow licensees to seek board approval for CE when the course may fall within the current topic requirements for education, but the provider has not sought board approval of the course. The education director's review and approval of these applications has become more time consuming as more licensees use out-of-state or alternative providers to obtain their CE. This fee will offset the expenses incurred in processing these applications.

The board is adding (22) to set a late filing fee for individual CE request applications. The board is placing a deadline for requesting review of these alternative education courses in ARM 24.210.667, and rather than refusing to review courses that are not submitted timely, the board will assess a late fee. This late fee is intended as a punitive fee that will deter late filing of individual CE requests and as such, is not commensurate with the associated costs.

It is reasonably necessary to add (23) and set a per-course fee for a board-sponsored instructor and course development courses. These courses are intended to improve the education offered through prelicensing education and CE by improving the knowledge and skills of the instructors teaching those courses. The proposed new fees will affect approximately 440 individuals and result in \$20,125 in additional annual board revenue.

24.210.426 TRUST ACCOUNT REQUIREMENTS (1) through (4)(e) remain the same.

(f) No payments of personal indebtedness of the broker shall be made from a trust ~~account funds~~;

(g) Money held in the trust account, which is due and payable to the broker, must be withdrawn within ten business days after such money becomes due and payable to the broker;

(h) remains the same.

(i) Maintenance of a trust account shall include the broker or designated broker, keeping at the broker or designated broker's office, a complete record of all funds received and disbursed, in the following manner:

(i) ~~a bank proof of deposit slip~~ showing the date of deposit, amount, source of the money, and where deposited;

(ii) remains the same.

(iii) if checks are used, trust account checks shall be numbered and all voided checks ~~retained~~ recorded. The checks shall denote the broker's business name, address, and should be designated as "trust account";

(iv) and (v) remain the same.

~~(vi) the record of deposit must include the date, the name of the party who is giving the money, and the name of the principal;~~

~~(vii) (vi)~~ for disbursements, the record must include the date, the each payee, and the amount;

(vii) no disbursement from the trust account shall be made until the deposit has been verified; and

(viii) remains the same.

(j) A chronological record shall be kept to show the receipts and the disbursements as they affect a single, particular transaction. The record must include the names of the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, payee, and amount must be shown. A running balance must be shown after each entry;

(k) remains the same.

(l) Trust account records and related real estate documents, including sales contracts, leases, and options, agency agreements, closing statements, and other real estate related documents shall be maintained for ~~five~~ eight years from the date of receipt of any funds or property;

(m) The board is authorized to examine each broker's trust account and related real estate documents. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The broker is required to fully cooperate with the board representative;

(n) remains the same.

(5) Funds deposited in a trust account in connection with a real estate transaction shall not be commingled with the broker's personal funds or other funds in said trust account, with the exception that a broker may deposit and keep a sum not to exceed \$1000 of broker's personal funds in the trust account, which sum includes any interest earned on the trust account if the trust account is maintained in an interest-bearing account and the interest accrues to the broker. Personal funds

may be distributed to the broker or the financial institution for payment of trust account bank charges. If personal funds are held in the trust account, a chronological ledger must be kept showing all deposits and disbursements of personal funds. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

(6) remains the same.

(7) All licensees shall ensure that all ~~real estate~~ trust funds which they receive are deposited in the broker's trust account or are delivered to the designated holder of the funds within three business days of ~~the broker's or salesperson's (whichever is earlier)~~ receipt of the money, unless otherwise agreed to by the parties. If funds are delivered to a designated holder, the licensee must obtain documentation of receipt by the designated holder. The licensee must maintain the documentation of the delivery of the funds in the same manner as trust account records.

(8) remains the same.

(9) All required trust account records may be maintained electronically, but must be maintained in a manner that permits auditing.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-316, 37-1-319, 37-51-202, 37-51-313, 37-51-321, 37-51-324, 37-51-503, MCA

REASON: The board determined it is reasonably necessary to amend the trust account rule to clarify that the broker's personal debt may not be paid from trust funds, whether or not the trust funds have been deposited into a trust account. This has always been the requirement and the board is amending the rule to address confusion and clarify the prohibition.

The board is amending (4)(i) to require the identification of monies disbursed from the trust account, as well as money received into the account. The board concluded that tracking disbursed trust money and linking it to a principal or property is necessary to ensure complete information about trust account funds. The board is also amending this section to require proof of deposit, but not the actual deposit slip, to allow for electronic record-keeping.

The board is amending (4)(i)(iii) to no longer require that if checks are used, all voided checks must be retained. Electronic banking is becoming more common in the industry and additionally, most financial institutions do not retain checks of any kind for any significant period of time. Additionally, licensees may perform mostly electronic transfers or print their own checks using their computer record-keeping system, rather than traditional preprinted checks. There are many reasons a check might be voided and the licensee would not have the ability to retain the check. The board determined that recording all voided checks is sufficient to account for any missing check numbers.

The board is removing the redundant requirement that deposit records contain the date, name of the party giving the money, and name of the principal as it is already required in (4)(i)(v). The board is amending (4)(i)(vi) to require identification of each payee in disbursements, since multiple payees can be included

in a single electronic disbursement. The board is adding (4)(i)(vii) to require that deposited funds are verified prior to disbursement to eliminate a possible overdraft of the trust account. The board holds the broker responsible when a trust account goes negative due to nonsufficient funds charges or payment and this verification will ensure the funds are available.

It is reasonably necessary to amend this rule to require that the transaction ledgers are maintained chronologically to enable licensees to determine if funds for a single transaction were sufficient to fund the transaction obligations.

The board is amending (4)(l) to identify the related real estate documents that must be maintained and available for audit. Although the related document requirements are currently established in policy and procedure, the board is now specifying them in rule to provide clarity and direction for licensees on the necessary documents and the requirement that brokers must produce those documents. The board is also increasing from five to eight years the length of time the trust account records and related documents must be maintained to eliminate confusion for licensees. The longer retention period is reasonably necessary as the documents and records are required when investigating complaints and auditing for compliance with board law and rules. Additionally, eight years coincides with statute of limitations on written contracts.

It is reasonably necessary to amend (4)(m) and clarify that documents relating to the trust account may also be examined by the board or the board's designee to ensure compliance with disclosure and trust account requirements. This amendment clarifies an existing requirement and sets current practice into rule.

The board is amending (5) to put brokers on notice of how personal funds in a trust account must be tracked. It is a requirement that all funds must be tracked and it has been consistent practice to require that brokers maintain a personal funds ledger in addition to client ledgers, but it has never been specified in rule.

It is reasonably necessary to amend (7) and remove the delineation of who receives the trust funds for the three-day calculation. No matter who receives it, all money must be deposited within three days of receipt, unless delivered to a designated holder or as otherwise agreed to by the parties. The board is also amending this section to clarify that delivery to the designated holder must comply with existing rules or with terms agreed to by the parties, and that documentation of the delivery is necessary to ensure licensees are appropriately and timely delivering trust funds to the designated holder.

24.210.430 INTERNET ADVERTISING RULES (1) remains the same.

(2) All Internet advertising shall truthfully and accurately describe the real property or service advertised. Real property advertisements shall identify the city, town, or county in which the real property is located. A specific street address is not required.

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

(h) Licensee identification should be visible as part of the advertising message when using multimedia advertising (e.g., ~~Web based~~ web-based, executable e-mail, attachments, etc.).

(i) remains the same.

(4) Licensees' Internet advertising may include real properties on which neither the licensee nor the brokerage company is the listing agent, so long as the listing agent has offered cooperation and has consented to Internet advertising by the licensee engaging in the Internet advertising, and the owners of the property have consented to the same. The offer of cooperation and consent to Internet advertising may arise pursuant to the rules and regulations of a multiple listing service in which the listing agent and the licensee, engaging in the Internet advertising, are both participating (provided the multiple listing system gives the listing agents the option of prohibiting Internet advertising of some or all of their listings by some or all of the participants on that multiple listing system) or by specific written agreement between them. The owner's consent may be included in the listing agreement and need not identify the specific licensee to whom consent to Internet advertising is given. Licensees' Internet advertising of real properties, on which neither the licensee nor the brokerage company is the listing agent, must set forth as part of the property information, a statement that the subject property is listed with another licensee or brokerage company and shall identify the listing agent or brokerage company, ~~including the office mailing address or e-mail address~~. The content of any property data obtained from another listing agent or multiple listing system may not be changed in whole or in part. However, such property data may be formatted differently and be condensed and further advertised if the advertisement contains the following statement or similar language: "The foregoing material was abstracted from another source and does not contain all of the information available at the source site. Please request further information when considering this property." No licensee shall be responsible for errors or misrepresentations of others, who reproduce or further disseminate the information concerning the licensee's listings, unless the licensee originated the error or misrepresentation.

(5) All Internet advertising must be current as of the date of the advertisement and must be updated ~~promptly~~ within seven days in the event of material changes to the listing, such as its expiration, termination, or amendment, and/or in the event of material changes to the information otherwise found in the Internet advertising. Internet advertising shall indicate the date on which it was created and last updated.

(6) remains the same.

(7) When a ~~third-party~~ third party controls or manages the web site or medium displaying the Internet advertising, on behalf of a licensee, the licensee is responsible to assure such Internet advertising and the ~~third-party~~ third party comply with the provisions of this rule.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-102, 37-51-103, 37-51-301, 37-51-321, MCA

REASON: The board determined it is reasonably necessary to amend (2) regarding Internet advertising rules. Current business practice allows an owner to opt out of an Internet posting of their address information. Following amendment, licensees must still identify the property by city, town, or county, but the licensee will need to include a specific street address if the owner has opted out of such disclosure.

The board is amending (4) to delete the requirement that licensees include the office or e-mail address of the listing agent in their Internet advertising when neither the licensee nor the licensee's brokerage company is the listing agent. This situation occurs when a licensee and another agent share information regarding the other agent's listing. In those circumstances, it is sufficient to disclose that the property is listed by another agent or brokerage company. The consumer does not receive any additional protection by requiring the inclusion of the listing office address or e-mail address, as long as the site owner complies with all disclosure requirements. The licensee posting the information must provide their own contact information to the consumer, whether they are the listing office or not.

The board determined it is reasonable and necessary to amend (5) and address ambiguity on the meaning of "promptly." The amendment clarifies the board's intent regarding the licensee's responsibility to update Internet information within seven days of any material change.

#### 24.210.601 GENERAL LICENSE ADMINISTRATION REQUIREMENTS

(1) Any time that a salesperson's association with the supervising broker is terminated, the supervising broker shall immediately ~~mail~~ return the salesperson's license to the board office with a letter noting the termination. The supervising broker remains the supervising broker for the salesperson, until the license and release are received by the board.

(2) A dispute between a salesperson and the supervising broker shall not be cause for failing to immediately ~~mail~~ return the salesperson's license to the board office.

(3) A salesperson whose license has been cancelled because of termination of association with their supervising broker, must properly notify the board of any new supervising broker relationship, or the desire to place the license on inactive status and pay all required fees within ten days of the board receiving the termination of association.

(4) A licensee shall not practice with a cancelled license. A license shall remain cancelled until transferred to a new supervising broker or placed on inactive status.

~~(3)~~ (5) When required in writing to do so by a salesperson formerly associated with a supervising broker, the supervising broker shall promptly provide the former salesperson with a certified statement on the form prescribed by the board, identifying all real estate transactions in which the salesperson was involved in connection with the salesperson's association with the supervising broker, within the three years preceding the request.

~~(4)~~ (6) Upon termination of a salesperson's association with the salesperson's supervising broker, the supervising broker shall immediately notify all principals as to the listings or pending transactions in which the salesperson was involved, that the salesperson is no longer affiliated or associated with the supervising broker, and that the listings and pending transactions are the responsibility of the supervising broker.

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

~~(6)~~ (8) Supervising brokers are responsible for the performance of salespeople under the supervising brokers' supervision. If a complaint is submitted



to the Board of Realty Regulation, alleging improper conduct on the part of a salesperson, a copy of the complaint shall be provided to the supervising broker who shall also provide a response to the complaint.

~~(7)~~ (9) Supervising brokers must provide ongoing real estate training to all salespeople under their supervision, in order to assure competent practice of the profession.

~~(8)~~ (10) A listing ~~obtained~~ agreement negotiated by a salesperson is not effective valid until it is reviewed, signed, and dated by the supervising broker.

~~(9)~~ (11) Supervising brokers have the responsibility to exercise adequate supervision to assure that all documents for a real estate transaction, prepared by salespeople under their supervision, are appropriately prepared and executed.

~~(10)~~ (12) A broker shall not sign the application of a salesperson, unless the broker and salesperson will be in lawful association, through employment contract or otherwise.

(13) Principals and agents to a particular transaction may consent to communication directly with each other's client.

(14) A salesperson whose supervising broker has failed to renew or reinstate the broker's expired broker license or supervising broker endorsement must transfer their salesperson license to another supervising broker within ten days of being notified by the board that their supervising broker's broker license or supervising broker endorsement has expired. Failure to transfer to a new supervising broker within ten days will result in cancellation of their active license. A salesperson shall not conduct licensed activity during this unsupervised period.

(15) A supervising broker must immediately inform the broker's supervised salespeople that the supervising broker's broker license or supervising broker endorsement has expired.

(16) An active, licensed salesperson may be temporarily associated with a supervising broker, other than the existing supervising broker of record listed on the salesperson's pocket card, as follows:

(a) The temporary transfer of supervision must be in writing and include:

(i) authorization of the transfer of supervision of the salesperson by the existing supervising broker, including the name and signature of the existing supervising broker;

(ii) acceptance of responsibility for the performance of the salesperson by the temporary supervising broker, including the name and signature of the temporary supervising broker;

(iii) the names of all salespersons transferring to the temporary supervising broker, which may be less than all of the salespersons under the supervision of the existing supervising broker; and

(iv) the effective beginning date and termination date of the temporary transfer.

(b) An existing supervising broker supervising more than one salesperson may temporarily transfer said salespersons to different temporary supervising brokers. Each individual salesperson may only have one temporary supervising broker at any given time.

(c) An existing supervising broker may not transfer temporary supervision of a salesperson for more than 60 days in any 12-month period, and any individual

salesperson may not be temporarily supervised by anyone for more than 60 days in any 12-month period. This limit may not be extended without written approval by the board, which must be based on good cause. A temporary supervising broker may exceed 60 days of temporary supervision in any 12-month period. A temporary supervising broker is not the "broker of record" of any salesperson who is temporarily transferred to the temporary supervising broker.

(d) The existing supervising broker may terminate the temporary transfer of supervision prior to the effective termination date by providing notice to the temporary supervising broker. Written notice shall also be provided to the board.

(e) A temporary supervising broker must supervise the salespeople for the agreed length of time and may not transfer supervision to any broker, other than the original existing supervising broker of record.

(f) Temporary transfers of supervision may be extended beyond the effective termination date subject to the limitation of ARM 24.210.611.

(g) The written transfer of supervision must be provided to the board no later than the three business days prior to the effective beginning date of the temporary transfer of supervision. A late filing will result in a late fee assessed against the existing supervising broker regardless of cause.

(17) In the event of the death or unanticipated incapacity of a salesperson's supervising broker (both existing and temporary):

(a) The salesperson may not practice real estate until the salesperson's license is transferred to a different supervising broker.

(b) The salesperson must inform the board of the death or incapacity within ten days of the existing supervising broker's death or incapacity.

(c) Supervision of the salesperson may be transferred to a temporary supervising broker as provided in ARM 24.210.611. However, the authorization set forth in ARM 24.210.611 shall not be required.

(18) A salesperson who does not wish to be supervised by a temporary supervising broker may place their salesperson license on inactive status or transfer their license to another supervising broker as provided in ARM 24.210.601.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-202, 37-51-301, 37-51-305, 37-51-308, 37-51-309, 37-51-313, MCA

REASON: In accordance with the biennial rule review, the board is amending this rule to address ongoing confusion created by ambiguity within the current rule. The proposed amendments outline current board processes, clarify changes in broker responsibilities, and specifically delineate the required actions of supervising brokers regarding the termination of a salesperson's association with a supervising broker.

The board is adding (4) to address licensee confusion by underscoring the prohibition of a cancelled licensee from practicing, until the license is transferred to a new supervising broker. This amendment clearly states that a cancelled license remains cancelled, until the licensee takes a specific action.

It is reasonably necessary to amend (10) to clarify for licensees and the public that when a listing agreement is secured by a salesperson, the listing is not valid and cannot be enforced unless and until it is reviewed, signed, and dated by the

supervising broker. The board concluded that the current rule is not clear that, without a broker signature, a valid contract does not exist.

It is reasonably necessary to add (13) to clarify that principals and agents can agree that the agent may speak directly with the other principal to a transaction. Currently, there is confusion whether this type of communication may occur. It is only allowable if the parties agree and a licensee may not communicate with the other principal to a transaction if the other principal has an agent and there has been no prior agreement to allow this communication. This concept is most common in entry-only listings as is being defined in this rule notice.

The board is adding (14) and (15) to specify the requirements for both salesperson and supervising broker when the supervising broker's license or supervision endorsement is allowed to expire. A salesperson may not conduct licensed activity without having a properly licensed supervising broker in place. These requirements will help ensure that the salespeople will either transfer to a properly licensed supervising broker or place their license on inactive status.

The board is adding (16) through (18) to further implement the statutory changes in Senate Bill 256 that provide for the temporary transfer of salesperson supervision.

24.210.602 EXAMINATION (1) and (2) remain the same.

(3) The board may, from time to time, review and amend the examination type, format, and the score upon which the pass or fail determination is made.

~~(4) For the broker examination, the pass-fail score is 80 percent.~~

~~(5) For the salesperson examination, the pass-fail score is:~~

~~(a) 80 percent for the uniform examination portions; and~~

~~(b) 70 percent for the state examination portion.~~

~~(6) All test scores may be scaled and equated for the specific examination either by the board or by the testing agency that provides or administers the examination. Candidates for licensure must take a board-approved examination and make a passing score as determined by a psychometrically sound, criterion-related method associated with assessment of minimal competence. The method used shall be published prior to the administration of the examination.~~

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-1-312, 37-1-316, 37-51-202, 37-51-302, 37-51-303,  
MCA

REASON: It is reasonably necessary to amend this rule to more accurately reflect how the pass point is actually determined, rather than stating a specific passing percentage. Each examination is a unique examination. Each question is weighted by performance difficulty so that each examination, although unique, is the same difficulty. This process utilizes psychometric formulas to ensure that different examinations are constructed using the same criteria. This method of determining the pass point is reflective of the actual scoring process used by the exam service and is psychometrically supported as the acceptable method.

24.210.604 SUPERVISING BROKER ENDORSEMENT (1) and (2) remain the same.

(3) To maintain the supervising broker endorsement, a broker shall complete four hours each licensure year of ~~board-approved~~ board-approved education in the area of supervising broker continuing education as designated by the board. This education will be part of the overall continuing education requirement.

(4) ~~After October 31, 2008, only~~ Only brokers with the a current supervising broker endorsement or who are attempting to reinstate an expired endorsement may get credit for completing supervising broker continuing education.

(5) through (7) remain the same.

(8) A supervising broker endorsement cannot be placed on inactive status. In order to maintain the endorsement, the supervising broker must complete the supervising broker continuing education annually. Failure to complete the supervising broker continuing education will result in the endorsement lapsing, expiring, and terminating.

(9) A supervising broker endorsement that has terminated cannot be reinstated. A broker will be required to meet the current requirements to obtain the supervising broker endorsement again.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-1-141, 37-1-319, 37-51-202, 37-51-204, 37-51-302, 37-51-303, MCA

REASON: The board is amending (4) to remove the 2008 implementation date for brokers getting credit for supervising broker CE since this date has passed. The board is also amending this section to clarify that only current supervising brokers and those brokers attempting to reinstate an expired supervising broker endorsement can get credit for attending a supervising broker CE course. Current rules require that a broker must complete supervising broker education prior to reinstatement of an expired supervising broker endorsement.

It is reasonably necessary to add (8) and reiterate current practice that a supervising broker endorsement may not be placed on inactive status, and must be renewed, or it will expire and terminate. To obtain an endorsement, the broker must take an eight-hour education course. The only requirement to maintain a supervising broker endorsement on active status is to complete a four-hour CE course annually. The board notes that there would be no benefit for a broker to place the endorsement on inactive status. To reactivate after being inactive for two years, the broker would have to complete eight hours of back education. There can also be no fee charged to a broker in connection to the supervising broker endorsement. Thus, to track active versus inactive supervising broker endorsements would require expenditure of unreimbursed board resources.

24.210.610 PREDETERMINATION FOR LICENSING (1) Any applicant with prior disciplinary actions, open legal matters, a criminal conviction, or a deferred sentence may, but is not required to, make application for a predetermination prior to completing the examination and required course of education for the sole purpose of

determining whether the applicant's qualifications, other than examination and education, are sufficient.

(2) through (4) remain the same.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-135, 37-1-137, 37-1-203, 37-1-307, 37-1-319, 37-51-202, 37-51-302, MCA

REASON: The board determined it is reasonably necessary to amend this rule to address applicant confusion regarding the board's predetermination of applications for licensure. The predetermination process is not intended for the usual routine applicant. The predetermination occurs before a potential license applicant undergoes the expense and effort of completing the prelicensing education and passing the licensing examination. The board intends it as an opportunity for potential applicants (with past legal or other issues that might bear on their qualifications or ability to obtain a license) to have the board review those past issues and determine whether those issues, by themselves, would be a reason to not approve an application for licensure. A predetermination is not a final determination that a potential applicant will be licensed. This predetermination application process is not intended for new applicants who do not have prior issues that might prevent them from being licensed.

24.210.611 APPLICATION FOR LICENSE -- SALESPERSON AND

BROKER (1) Applicants for license must make application on forms approved by the board and accompanied by the required fee, ~~and must include a recent 2" x 2" photograph for identification of the applicant.~~

(2) through (9)(b)(iii)(A) remain the same.

(B) one point for each licensed real estate ~~full-time~~ full-time equivalent (FTE) supervised within the last 36 months, maximum of ten points; or

(C) through (9)(f) remains the same.

(g) In order to claim credit for a transaction, the applicant must have taken an active role in the transaction as determined by the board, except that a supervising broker may claim supervision points as provided in (9) above.

(h) No more than one credit total per side per transaction may be claimed by a team or its members.

(10) The board will review all nonroutine applications.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-1-304, 37-51-202, 37-51-302, 37-51-303, MCA

REASON: The board is amending (1) to eliminate the unnecessary requirement for an applicant's photograph as part of the application. The board concluded that the picture of the exam candidate that is already included in the exam results is acceptable for licensee identification.

It is reasonably necessary to amend (9) to clarify that an applicant for a broker license must have taken an active part in a transaction before claiming credit to meet the experience requirement. The board concluded that it is not enough for a

broker to be a member of a team of licensees or just a member of an office, but must have actually performed significant duties in a transaction before claiming experience credit. The board recently received a number of questions on this issue and the amendment will address any confusion.

The board is also amending (9) to limit the experience requirement allowable per transaction to one total point so that a team of licensees or members of an office may not each claim whole experience credit for a single transaction. The board concluded that each transaction is one point and cannot be shared by multiple licensees in a total amounting to greater than one point.

It is reasonable and necessary to add (10) and clarify for the public and applicants that the board has not authorized the department to issue licenses for any nonroutine applications without prior board review, as is the current practice. The board is proposing to define routine application at ARM 24.210.301 in this notice. All other applications not meeting the definition are to be considered nonroutine and require board review.

24.210.624 INACTIVE LICENSES (1) through (4) remain the same.

(5) An inactive licensee may not receive compensation for real estate activity not earned while the license was active. If a transaction is initiated prior to the date of inactive status, but closes after the date of inactive status, the licensee may receive compensation.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-319, 37-51-103, 37-51-202, 37-51-204, 37-51-301, 37-51-306, 37-51-308, MCA

REASON: The board is amending (5) to address questions concerning when an inactive licensee can be paid. Compensation is allowed as long as the activity being compensated for was completed before the licensee went inactive. This addition will clearly identify when a salesperson or broker may receive compensation while their licenses are on inactive status.

24.210.625 INACTIVE TO ACTIVE LICENSE STATUS (1) and (1)(a) remain the same.

(b) provide evidence of completing 24 hours of continuing education within the ~~proceeding~~ preceding 24 months, of which eight hours must be mandatory education and the remaining 16 hours may be mandatory or elective education; ~~and~~

(c) provide evidence of completing the previous license year core course in addition to the continuing education, and

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

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-306, 37-1-319, 37-51-202, 37-51-204, 37-51-302, 37-51-308, 37-51-311, MCA

REASON: It is reasonably necessary to amend this rule to correct the inaccurate use of the word "proceeding" that was discovered during the biennial review. The

board always intended that the time period referenced is the 24-month period before application for reactivation.

The board is adding (1)(c) to specify that licensees going from inactive to active status licensure must complete the core course in addition to the CE requirements. The board implemented the annual board-mandated core course requirement for active brokers and salespersons in late 2011. This amendment clarifies that this requirement applies when moving from inactive to active status.

24.210.635 RENEWALS (1) and (2) remain the same.

(3) A cancelled salesperson license may not be renewed. The license must be placed on inactive status or transferred to a supervising broker before it can be renewed.

(3) through (5) remain the same, but are renumbered (4) through (6).

AUTH: 37-1-319, 37-51-203, MCA

IMP: 37-1-141, 37-1-319, 37-51-202, 37-51-309, MCA

REASON: The board is amending this rule to address licensee confusion by clarifying that, according to statute, a salesperson's license released by a supervising broker is cancelled and not eligible for renewal. An inactive license may be renewed, but a canceled license may not. A cancelled license indicates the licensee has essentially abandoned the license. To demonstrate a salesperson's intent to maintain the license, the salesperson must first timely transfer it to another supervising broker or place it on inactive status and must do so before the salesperson is eligible to renew.

24.210.641 UNPROFESSIONAL CONDUCT (1) through (5)(s) remain the same.

(t) when acting as a buyer agent, disclosing to a buyer client who is a principal the to a real estate transaction, the name of a competing client who is also making an offer on the same property or disclosing the amount, terms and or provisions of a the competing principal's client's offer when a buyer's broker has more than one principal making offers on the same property;

(u) through (x) remain the same.

(y) violating the Residential Lead-Based Paint Disclosure Program of Title X, section 1018 of the United States Code;

(z) failing, while managing property for owners acting as a property manager as defined in 37-51-102, MCA, to abide by the requirements of 37-51-607, MCA, and the requirements of the Board of Realty Regulation's rules for property management as set forth in ARM 24.210.805 and 24.210.828. Incidental property management duties shall not require compliance with ARM 24.210.828(3)(u);

(aa) remains the same.

(ab) violating the state and federal ~~human rights~~ fair housing statutes;

(ac) through (af) remain the same.

(ag) failing to disclose in advertising either:

(i) the licensee's name, license number, and identifying that the advertisement is made by a real estate licensee; or

(ii) that the advertising is made by a brokerage company. If the company name does not include "realty" or "real estate," the advertising must include the phrase "a real estate agency";

(ah) failing to comply with Internet advertising is subject to the provisions of ARM 24.210.430;

(ah) through (aj) remain the same, but are renumbered (ai) through (ak).

~~(ak) (al) a licensee shall not engage~~ engaging in or conduct ~~conducting~~ business as a real estate licensee, or ~~advertise~~ advertising as a real estate licensee, ~~or engage in or conduct~~ conducting the business of a real estate licensee at a time when the licensee's real estate license has expired, is cancelled, or is on inactive status;

~~(al) (am) acting as~~ offering real estate guidance, direction, or advice to a buyer agent without a written buyer broker agreement;

(am) through (ap) remain the same, but are renumbered (an) through (aq).

~~(aq) (ar) submitting a competing offer as a principal in a transaction with the~~ licensee's client; ~~or~~

~~(ar) (as) failing to account for or misappropriation of funds being held in trust;~~

(at) indicating on a renewal form that the licensee has completed all required continuing education as of the date of submission of the renewal form when the licensee has not completed the continuing education;

(au) failing to document any agreement allowing an agent's principal to negotiate directly with an opposing agent;

(av) failing as a listing agent on an entry-only listing to comply with all other statute and rule requirements of a real estate licensee;

(aw) failure to document compliance with 37-51-105, MCA, prior to or contemporaneously with an offer for the purchase and sale, rental, or lease of inhabitable real property;

(ax) when applying for a broker license, claiming more credit for transactional experience than actually earned; or

(ay) as a supervising broker, failing to immediately inform the broker's supervised salespersons that the supervising broker's license or endorsement has expired.

(6) The revocation, suspension, or other disciplinary treatment of any other professional or occupational license or privilege, held by the licensee in this state or another state jurisdiction, may be grounds for license discipline in this state, if the board determines that the substantive grounds for the previous disciplinary treatment relates to the public health, safety, and welfare as it applies to real estate activity.

(7) Real estate licensees are responsible for the actions of their employees who aid or assist the real estate licensee in the performance of real estate functions. At no time may an unlicensed employee perform an activity for which a license is required.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-137, 37-1-141, 37-1-306, 37-1-307, 37-1-312, 37-1-316, 37-1-319, 37-51-102, 37-51-202, 37-51-301, 37-51-302, 37-51-306, 37-51-309, 37-51-313, 37-51-314, 37-51-321, 37-51-324, 37-51-503, 37-51-508, 37-51-512, MCA



REASON: The board determined it is reasonably necessary to amend (5)(t) to address questions concerning what type of information can be released by a buyer agent to multiple competing clients. The board is amending to this rule to clarify that a buyer agent cannot disclose the name of a potential buyer or the terms of the offer, but can disclose the fact that a competing offer exists.

The board is amending (5)(z) to clarify that a salesperson or broker acting as a property manager must comply with certain property management statutes and rules when performing property management duties. Real estate salespersons and brokers are authorized by statute to conduct property management, even without a separate property manager license and the board concluded that it is important for these licensees to understand the need to comply with property management requirements while performing those duties.

It is reasonable and necessary to amend (5)(ab) to specifically identify the state and federal statutes a licensee is required to follow. The state and federal human rights acts contain many subjects that are not relevant to real estate licensee activity. The board concluded that it is appropriate for licensees to comply with the portion of those statutes dealing with fair housing and it is unprofessional conduct for a licensee to violate those statutes.

The board is amending (5)(ag) to specify the type of disclosure required in advertising to address confusion about advertising disclosure and the requirement to identify who is placing advertising. The board believes this amendment will clarify the requirements to encourage licensees to make the proper disclosures and so consumers will know that a real estate licensee placed the advertisement.

The board is amending (5)(ah) to clarify that licensees must comply with advertising rules established exclusively for the Internet when placing Internet advertising. The Internet is a unique advertising medium and holds its own set of requirements to ensure the consumer is adequately informed when viewing Internet advertising by a licensee.

It is reasonably necessary to amend (5)(al) to clarify that it is unprofessional conduct to advertise or otherwise conduct business as a licensee, when the real estate license is expired, cancelled, or inactive. The board is adding a "cancelled" license to align with 37-51-309, MCA, which references license cancellation.

The board is amending (5)(am) to clarify that it is unprofessional conduct to act as or conduct business as a buyer broker without first securing a written buyer broker agreement. The proposed amendment identifies some specific activities that definitely require a written buyer broker agreement in place. While the board does not intend this to be an exhaustive list, and does not establish a specific time frame in which the buyer broker agreement must be signed, the board believes this clarification will be helpful to guide licensees.

It is reasonable and necessary to add (5)(at) to notify licensees that it is unprofessional conduct to indicate on the renewal form that they have met the continuing education (CE) requirements if they have not done so. The board notes that oftentimes licensees indicate the completion of CE when they intend to complete it before the renewal date, but then fail to meet that deadline. The board sees this as renewing when not qualified and falsification of the renewal form, and notes that this can result in license discipline.

The board is adding (5)(au) to clarify that to avoid potential license discipline, a licensee must document any agreement between the licensee and the principal that the principal may negotiate directly with the opposing agent, rather than all negotiations going through the principal's agent. As this is becoming a more common practice, the board is attempting to identify minimum requirements for this type of agreement. Failing to obtain such a written agreement could result in potential discipline for the opposing agent for interfering with a contract. The board concluded it is essential that the agent document the agreement and maintain that documentation as proof for the agent to communicate directly with the licensee's client, as well as the client's authorization of direct communication with other agents.

It is reasonably necessary to add (5)(av) and specify that entry-only listing agents must comply with all applicable laws and rules, except those waived by the principal, and that failure to do so is unprofessional conduct. The entry-only listing agent is a relatively new business model and the board wants to ensure that licensees implementing this business model understand the obligations to their principals.

The board is adding (5)(aw) to include as unprofessional conduct licensees' failure to document compliance with sexual and violent offender disclosure requirements. Currently, 37-51-105, MCA, requires compliance with the disclosure requirements, but there is no mandated means of demonstrating compliance. Disputes often come down to the word of one person against another. While the board will not dictate a particular form of documentation, a licensee must have the ability to demonstrate compliance through documentation.

It is reasonably necessary to add (5)(ax) and specify that it is unprofessional conduct for a broker applicant to claim credit for transactions in which the applicant did not actively participate to earn the experience credit. The board concluded that this is not merely a falsification of an application, but that overstating the experience of a broker applicant works to deceive the board and is unprofessional conduct.

The board is adding (5)(ay) to provide that it is unprofessional conduct for a supervising broker to fail to notify the salespersons under their supervision that the supervising broker failed to renew their supervising broker endorsement. The board determined that this notification will alert the salespersons that they must stop practicing and either transfer their license to a broker with a valid endorsement or place their sales licenses on inactive status. The supervising broker has a responsibility to their salesperson and it is unprofessional conduct to fail to communicate their legal inability to continue to supervise the sales staff.

It is reasonable and necessary to amend (6) to clarify that disciplinary action by any recognized licensing entity, not just another state, may be grounds for discipline by the board. Because Montana shares a border with Canada, it is conceivable that a Montana license applicant could have been disciplined by a Canadian province. That disciplinary action should be given an equal weight as a disciplinary action taken by another state.

The board is adding (7) to notify licensees that even though they may employ unlicensed persons to perform tasks, the licensee remains responsible for their employees' actions. The board is also reiterating that unlicensed employees may not be delegated duties that require a license, no matter the level of licensee supervision. The board often receives inquiries regarding the activities of unlicensed

assistants and concluded that this amendment will help clarify licensees' responsibilities when employing unlicensed individuals.

24.210.660 PRELICENSING EDUCATION -- SALESPERSONS AND BROKERS (1) through (3) remain the same.

(4) It is the responsibility of the applicant to verify that courses are approved for Montana prior to completing the course for credit.

~~(4)~~ (5) Advanced nationally recognized designation courses may be submitted and may be approved, in part, to fulfill specific topics of the broker prelicensing education requirement.

(5) through (7) remain the same, but are renumbered (6) through (8).

~~(8)~~ (9) Approved instructors must have one year of experience in real estate education, and:

(a) remains the same.

(b) advanced training on instruction methods and adult learning; ~~and~~

~~(c) one year's experience in real estate education.~~

(9) remains the same, but is renumbered (10).

(a) through (c) remain the same.

~~(d) construction and land development;~~

(e) through (l) remain the same, but are renumbered (d) through (k).

(l) general trust accounting for real estate licenses;

(m) through (t) remain the same.

~~(10)~~ (11) ~~Effective January 1, 2003, the~~ The 60 hours of ~~board approved~~ board-approved broker prelicensing education will consist of the following modules:

(a) through (d) remain the same.

(e) professional conduct; ~~and~~

(f) real estate and property management trust accounting; and

(f) remains the same, but is renumbered (g).

~~(11)~~ (12) Courses must be designed so that no more than ten minutes per ~~hour~~ 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

~~(12)~~ (13) The applicant must attend 90 percent of ~~each~~ the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.

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

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-1-131, 37-51-302, MCA

REASON: The board determined it is reasonably necessary to add (4) to clarify that applicants are responsible for ensuring that the prelicensing courses they take are approved by the board for Montana or meet licensing requirements. Some courses, particularly distance education courses, are marketed and offered nationally, without getting approved in all jurisdictions. Although a course may be approved after attendance, if the licensee does not verify Montana approval prior to taking the course, the licensee risks having the course disallowed.

The board is reorganizing (9) to clearly set forth the requirement for one year of experience in real estate education for prelicensing instructors. The board intends that all prelicensing instructors have, at a minimum, one year of experience in real estate education. It is not acceptable to the board for an instructor to simply have a bachelor's degree in a field associated with the subject being taught. Additionally, the instructor must hold either a satisfactory bachelor's degree or have advanced training on adult instruction methods and learning. While not a new requirement, the current rule format creates confusion among applicants.

The board is amending the course topics required in the sales prelicensing course by adding general trust account requirements and eliminating construction and land development. The board determined it is necessary for all licensees to have a good understanding of trust account requirements and how to comply with current law and rules, even though the responsibility for maintaining the trust account lies with the broker. Construction and land development are more specialized areas of real estate and are more advanced topics than needed for entry-level prelicensing courses.

The board is amending (11) by striking the 2003 effective date for the broker prelicensing education as this effective date has passed and has no application to current rules. The board is also amending (11) by adding property management trust accounting to the mandatory topics covered in the broker prelicensing education course. This addition puts more emphasis on brokers learning the intricacies of trust accounting for both real estate and property management, since brokers are licensed to practice in both areas and may supervise salespersons who perform both real estate and property management duties.

The board determined it is reasonably necessary to amend (12) and (13) and clarify attendance and break requirements when attending board-approved courses. The ten-minute breaks are not in addition to the 90 percent attendance requirement. The amendments clarify that the course provider and student have some flexibility when a student arrives late to a course. The student is then required to attend the remaining course in its entirety. The amendments also clarify the current practice to make exception for the 100 percent attendance requirement for specific, unusual circumstances. With the mandate of 100 percent attendance, it is reasonable to give course sponsors the ability to use their judgment to allow for reasonable accommodations for people with medical conditions.

24.210.661 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- SALESPERSONS (1) ~~Effective January 1, 2007, all~~ All new sales licensees will receive an interim license that will ~~expire~~ terminate October 31 of the year of the initial license date.

(2) ~~Effective January 1, 2007, all~~ All new sales licensees are required to complete the ~~board mandated~~ board-mandated new licensee mandatory continuing education requirement, commonly known as the 12-hour rookie course, by the renewal date as set by ARM 24.101.413, following their original license issue date.

(3) remains the same.

(4) The new licensee mandatory continuing education does not replace the 12-hour continuing education requirement, which begins with the second year of licensing.

(5) remains the same.

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

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

REASON: The board is amending this rule by striking the 2007 effective date for the new licensee continuing education as this effective date has passed and has no application to current rules. The board is also amending (1) to clarify that an interim license "terminates" if a licensee fails to meet the new licensee mandatory continuing education. An "expired" license carries a specific meaning pursuant to 37-1-141, MCA, and to use that term may misinform interim licensees that "expired" interim licenses may be reinstated as is allowed with regular licenses. However, interim licenses may not be reinstated. If an interim licensee fails to comply with the mandatory new licensee continuing education requirement, the interim license terminates and the licensee must reapply.

24.210.667 CONTINUING REAL ESTATE EDUCATION (1) Each active licensee is required to annually complete a board-mandated core education course of a length established by the board every year. The board-mandated core education does not apply to meeting the continuing education requirement provided for in (2), except as provided in (18) and (19) and (20).

(2) through (4) remain the same.

(5) The licensee must attend 90 percent of ~~each~~ the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.

(6) remains the same.

(7) By August 1 of each year, the board will identify topics in which the ~~42~~ required hours of education must be obtained for the following reporting year. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.

(8) remains the same.

(9) No licensee shall repeat a course for credit in the same reporting year, without the course receiving prior board approval.

(10) remains the same.

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

(12) remains the same.

~~(13) All approved education must be available to all licensees.~~

~~(14) (13)~~ (13) All continuing education ~~instructors or their designee~~ course providers must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.

~~(15) (14)~~ (14) ~~Instructors or their designee~~ The course provider must report all education attendance in a format approved and provided by the board.

~~(16)~~ (15) Failure to accurately and timely provide attendance information to the board could result in withdrawal of the course provider approval ~~or withdrawal of the instructor approval.~~

~~(17)~~ (16) All continuing education courses must be taken and completed within the reporting period. ~~No carry-over hours will be accepted from one reporting period to another.~~

(18) through (20) remain the same, but are renumbered (17) through (19).

(20) Licensees completing continuing education in another jurisdiction or completing education that the licensee believes meets the topic requirements of the board, but which was not previously submitted to the board for approval, may submit an individual course application for approval consideration.

(21) The completed individual course application and accompanying fee must be filed with the board office within 30 days after completion of the course. Failure to timely file the application will result in a late filing fee.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

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

REASON: The board determined it is reasonably necessary to amend (5) to clarify the attendance and break requirements when attending board-approved courses. The ten-minute breaks are not in addition to the 90 percent attendance requirement. The amendment clarifies that the course provider and student have some flexibility when a student arrives late to a course. The student is then required to attend the remaining course in its entirety. The amendments also clarify the current practice to make exception for the 100 percent attendance requirement for specific, unusual circumstances. With the mandate of 100 percent attendance, it is reasonable to give course sponsors the ability to use their judgment to allow for reasonable accommodations for people with medical conditions.

The board is amending this rule to eliminate the specific hour requirement reference from (7). The board has already set the continuing education (CE) hour requirements in (2) and it is not necessary to duplicate them here.

It is reasonably necessary to amend (9) to allow credit for duplication of course attendance, with prior approval from the board, under certain unique circumstances. The board acknowledges that the design and content of a course could be of a nature that licensees receive different information each time they complete the course. Prior board approval to repeat the same course during the same reporting period is necessary for a licensee to receive credit, and will only be approved under unique circumstances. A licensee may not apply by an individual continuing education request application and receive credit twice for completing the same course twice. The approval must be requested by the course developer.

The board is deleting (13) to no longer require that all courses be available to all licensees. This amendment will allow attendance at courses that are limited to a specific target audience. An example is the board "Rookie" course, which is only available to new sales licensees during their first licensing year. The board notes that at times, attendance by others may cause disruption in the education.

It is reasonably necessary to amend this rule to require that course providers report licensee hours rather than course instructors. The board notes that in most

cases, course instructors are hired by a course provider to offer instruction and do not monitor attendance or award attendance credit. Referring to the course provider will include those instructors that do offer courses and monitor attendance.

The board is removing the prohibition on carry over hours from (16). This prohibition already appears in (6) and restating it is redundant and unnecessary.

It is reasonably necessary to add (20) and (21) to identify who may file individual course applications and establish the filing requirements. There are instances when licensees complete education they believe is equivalent to Montana board-approved education. In those instances, they may apply for course review by submitting an application, attaching necessary documents, and paying an administrative fee. Because of the staff workload necessitated by the annual requirement for continuing education and the need to eliminate the large volume of individual course applications submitted during the final days prior to renewal deadline, the board will require licensees to file complete applications within 30 days of course completion. The board anticipates that this requirement will provide adequate time for course review and help ensure that proper credit is awarded to licensees. If applications are submitted enough in advance, licensees will have enough time to take additional courses if a submitted course is denied credit. Failure to meet the filing requirement will result in a late filing fee.

24.210.674 CONTINUING REAL ESTATE EDUCATION -- COURSE APPROVAL (1) and (2) remain the same.

(3) A course may be advertised for credit only after a completed course application has been submitted to the board office accompanied by all required attachments and fees. Courses not submitted for approval may not be advertised for credit. After a course submission, but prior to approval, the course may be advertised if all advertising includes the statement that the course is "pending approval". This advertising must appear in comparable font size and color as the rest of the advertising. A course is not "pending approval" unless a completed course application has been submitted to the board office accompanied by all required attachments and fees.

(4) Courses must be designed so that no more than ten minutes per hour 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(5) The board or its designee may, at its discretion, and without requiring further qualification, approve courses from the approved topic list under the following instances:

(a) remains the same.

(b) courses which lead to designations or certifications by ~~board recognized~~ board-recognized trade or professional associations.

(6) remains the same.

(7) It is the responsibility of the licensee to verify that courses are approved for Montana prior to completing the course for credit.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

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

REASON: It is reasonably necessary to amend (4) to clarify that ten-minute breaks are for each 60-minute period of time, not for each "hour" as defined by the board. This clarification is necessary because the board's definition of an "hour" of education is 50 minutes of instructional time. The board notes that instructors, at their discretion, may teach for longer periods of time and combine break times, allowing for longer breaks.

The board is adding (7) to clarify that licensees are responsible to ensure that courses they take are approved by the board for Montana or meet continuing education requirements for Montana. Some courses, particularly distance education courses, are marketed and offered nationally, without getting approved in all jurisdictions. It is up to licensees to make sure they are taking courses that will satisfy Montana licensing requirements. Although a course may be approved after attendance, if the licensee does not verify Montana approval prior to attending, the licensee risks having the course disallowed.

<u>24.210.801 FEE SCHEDULE</u> (1) through (13) remain the same.	
(14) Individual CE request application (per course)	<u>25</u>
(15) Late filing of individual CE request application (per course)	<u>100</u>
(16) Instructor/course development course	<u>\$100 per course</u>
(14) remains the same, but is renumbered (17).	

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

REASON: As these fees are also set forth in ARM 24.210.401, please see the reasonable necessity following that rule in this notice.

24.210.803 PROPERTY MANAGEMENT DEFINITIONS The terms used in this chapter shall have their common meaning as used in the property management industry and, unless the content otherwise requires, the following meanings shall also apply:

(1) "Salaried employee" as used in Title 37, chapter 51, part 6, MCA, means an individual employed by an owner to manage the property of that owner. This term does not include an unlicensed real estate or property management secretary or the holder of a similar position employed to manage many owners' property for a single broker or property manager. ~~Property manager is one who is engaged in property management as defined in 37-51-602, MCA.~~

(2) "Board" means the Board of Realty Regulation provided in ~~2-15-1867~~ 2-15-1757, MCA.

AUTH: 37-1-131, ~~37-51-202~~, 37-51-203, MCA  
IMP: 37-51-102, 37-51-602, MCA

REASON: The board determined it is reasonably necessary to amend this rule to eliminate the redundant definition of "property manager," as it is already included in statute. The board is also clarifying the definition of a "salaried employee" as it



applies to property management. The board is amending (2) to correct an inaccurate citation to the statute that creates the board.

24.210.805 PROPERTY MANAGEMENT TRUST ACCOUNT

REQUIREMENTS (1) Each property manager will maintain a trust account which will be designated by the words "trust account," wherein all deposits, rent payments, or other trust funds received by the property manager, on behalf of any other person, shall be deposited. Such trust accounts may be maintained in interest-bearing accounts with the interest payable to the property manager, principal, ~~third party~~ third party, or any other person, as may be designated by agreement. Interest payable to the property manager must be identified by agreement as consideration for services performed. Offices or firms having more than one property manager may utilize a single property management trust account. Property managers must maintain all required ledgers for each trust account.

~~(2) Trust funds must be deposited in an insured account in a financial institution located in Montana.~~

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

~~(4)~~ (3) Funds deposited in a property manager trust account, in connection with a property management transaction, shall not be commingled with the property manager's personal funds or other funds in the trust account, with the exception that the property manager may deposit and keep a sum not to exceed \$1000 in the trust account from the property manager's personal funds, including the interest earned on the trust account, which accrues to the property manager. Personal funds may be distributed to the property manager or the financial institution for payment of trust account bank charges. If personal funds are held in the trust account, a chronological ledger must be kept showing all deposits and disbursements of personal funds. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

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

(a) When the property management agreement is terminated, but the rental agreement is still in effect, and the licensee is holding funds deposited by a tenant, the licensee shall ~~promptly and in writing advise~~ notify the tenant in writing within five business days that the funds and current tenant files, including lease and condition reports, will be transferred to the property owner or the owner's designee within 30 days of the notification. The notice shall also contain the name and address of the property owner or the owner's designee to whom the funds are to be transferred.

(b) The property manager shall ~~timely~~ must transfer funds and current tenant files, including the lease and property condition reports, pursuant to the notice to the tenant.

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

~~(8)~~ (7) Except for personal funds referenced in ~~(4)~~ (3), no payments of personal indebtedness of the property manager shall be made from such trust account funds.

(9) and (10) remain the same, but are renumbered (8) and (9).

(a) ~~a bank proof of deposit slip~~ proof of deposit slip showing the date of deposit, amount, source of money, and where deposited;

(b) remains the same.

(c) if checks are used, trust account checks must be numbered and all voided checks ~~retained~~ recorded. The checks must denote the property manager's business name, address, and must be designated as "trust account";

(d) and (d)(i) remain the same.

~~(ii) a record of deposit must include the date, the name of the party who is giving the money, and the name of the principal;~~

~~(iii) (ii) for disbursements, the record must include the date, the each payee, and the amount;~~

(iii) no disbursement from the trust account shall be made until the deposit has been verified;

(iv) remains the same.

~~(14) (10)~~ (10) A chronological ledger must be kept for each tenant showing all rents, deposits, and disbursements. The record entries must clearly identify the parties to a transaction, the dates, and the amounts received. When disbursing funds, the date, payee, and the amount must be shown. A running balance must be shown after each entry.

~~(12) (11)~~ (11) A chronological record must be kept for each property owner showing all income, expenses, and disbursements. The record entries must clearly identify the parties to a transaction, the date, and the amounts received. When disbursing funds, the date, the payee, and the amount must be shown. A running balance must be shown after each entry.

~~(13) (12)~~ (12) The trust account must be reconciled monthly, except in the case where there has been no activity during that month.

~~(14) (13)~~ (13) Every property manager shall keep all records required by ~~(10) (9)~~ and complete files of properties managed (property management agreement, rental agreement, and all transactions concerning the property in which the property manager was involved) for not less than ~~five~~ eight years from the date the property management agreement terminates.

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

~~(16) (15)~~ (15) The board is authorized to examine each property manager's trust account and all related records. Such examination will be conducted by a board representative and will be at such time as the board representative may request during normal business hours. The property manager is required to fully cooperate with the board representative.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-316, 37-1-319, 37-51-202, 37-51-321, 37-51-601, MCA

REASON: The board is amending (1) and specify that property managers are required to maintain all ledgers for each trust account. The board concluded that it is not acceptable for property managers to have a single ledger for multiple accounts. Additionally, having a separate ledger for each account assists the board's auditor to more easily identify separate funds.

The board is striking (2) to remove redundant language. The requirement that all property management trust funds must be deposited in an insured account in a financial institution located in Montana, is already included in (3) of this rule.

It is reasonably necessary to amend (3) to specify how personal funds in a trust account must be tracked. It is a requirement that all funds must be tracked and it is common practice for the board's auditor to require brokers to maintain a personal funds ledger, in addition to client ledgers, in order to track personal funds. However, this was never before specified in rule. This amendment will notify brokers of how personal funds must be accounted for and tracked. Additionally, it is essential that certain identifying information is included in the record, so funds can be linked to a particular property.

The board is amending (5) to clarify the requirements for property managers to notify existing tenants of a change in property management. The property manager must notify the tenant that a change in management has taken place, and that all funds and a copy of the tenant files held by the property manager will be transferred to the property owner or the new management entity. To avoid confusion as to how long "promptly" is, the board is specifying that written notice must occur within five days of the change. The amendment further specifies that the property manager must follow through and transfer the funds and files pursuant to the notice to the tenant.

It is reasonably necessary to amend (7) and specify the prohibition of paying personal indebtedness from trust funds, whether the trust funds have been deposited into the trust account or not. This has always been prohibited and the board is simply seeking to add clarity.

The board is amending (9) to require proof of deposit, but not the actual deposit slip, to allow for electronic record-keeping. The board is also amending this section to no longer require the retention of all voided checks, if checks are used. Electronic banking is becoming more common in the industry and additionally, most financial institutions do not retain checks of any kind for any significant period of time. Additionally, licensees may perform mostly electronic transfers or print their own checks using their computer record-keeping system, rather than traditional preprinted checks. There are many reasons a check might be voided and the licensee would not have the ability to retain the check. The board determined that recording all voided checks is sufficient to account for any missing check numbers.

The board is removing the redundant requirement in (9)(d)(ii) that deposit records contain the date, name of the party giving the money, and name of the principal as it is already required in (d)(i). The board is amending this section to require identification of each payee in disbursements, since multiple payees can be included in a single electronic disbursement. The board is adding (9)(d)(iii) to require that deposited funds are verified prior to disbursement to eliminate a possible overdraft of the trust account. The board holds the property manager responsible when a trust account goes negative due to nonsufficient funds charges or payment and this verification will ensure the funds are available.

It is reasonably necessary to amend this rule and require that transaction ledgers and records are maintained chronologically to enable licensees to determine if funds for a single transaction were sufficient to fund the transaction obligations. The board is amending (13) from five to eight years the length of time the trust account records and related documents must be maintained to eliminate confusion for licensees. The longer retention period is reasonably necessary as the documents and records are required when investigating complaints and auditing for

compliance with board law and rules. Additionally, eight years coincides with statute of limitations on written contracts.

It is reasonably necessary to amend (15) and clarify that documents relating to the trust account may also be examined by the board or the board's designee to ensure compliance with disclosure and trust account requirements. This amendment clarifies an existing requirement and sets current practice into rule.

24.210.807 PROPERTY MANAGEMENT LICENSE TRANSFER REQUIREMENTS (1) A property management licensee who changes the office location ~~or affiliation~~ must notify the board office in writing within ten business days of the change. The proper fee must accompany such notice. The board office will then issue a corrected pocket card for the remainder of the renewal year.

AUTH: 37-1-131, 37-51-203, MCA  
IMP: 37-51-605, MCA

REASON: The board is amending this rule to clarify that property management licensees must notify the board of changes in office location to align with 37-51-605, MCA, that requires property managers maintain a fixed office in Montana and notify the board of address changes.

The board is also striking the unnecessary requirement for property managers to notify the board of changes in affiliation, as the board does not license, register, or track property managers' affiliation.

24.210.809 PRELICENSING PROPERTY MANAGEMENT COURSE AND INSTRUCTOR REQUIREMENTS (1) through (3) remain the same.

(4) It is the responsibility of the applicant to verify that courses are approved for Montana prior to completing the course for credit.

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

(~~7~~) (8) Approved instructors must have one year of experience in the practice of property management or property management education and:

(a) remains the same.

(b) advanced training on instruction methods and adult learning; ~~and.~~

(~~c~~) one year of experience in property management education.

(8) through (9)(f) remain the same, but are renumbered (9) through (10)(f).

(g) definitions and terms commonly used in the industry;

(h) through (j) remain the same.

(11) Courses must be designed so that no more than ten minutes per 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(12) The applicant must attend 90 percent of the first hour and 100 percent of each additional hour of the approved course time in order to receive credit for attendance. Reasonable accommodations will be made for people with medical conditions.

AUTH: 37-1-131, 37-51-203, MCA  
IMP: 37-51-202, 37-51-601, 37-51-603, MCA

REASON: The board determined it is reasonably necessary to add (4) to clarify that applicants are responsible for ensuring that the prelicensing courses they take are approved by the board for Montana or meet licensing requirements. Some courses, particularly distance education courses, are marketed and offered nationally, without getting approved in all jurisdictions. Although a course may be approved after attendance, if the licensee does not verify Montana approval prior to attending it, the licensee risks having the course disallowed.

The board is reorganizing (8) to clearly set forth the requirement for one year of experience in property management or property management education for prelicensing instructors. The board intends that all prelicensing instructors have, at a minimum, one year of experience in property management or property management education. It is not acceptable that instructors simply have a bachelor's degree in a field associated with the subject being taught. Additionally, the instructor must hold either a satisfactory bachelor's degree or have advanced training on adult instruction methods and learning. While not a new requirement, the current rule format creates confusion among applicants.

The board is amending the course topics required in the property management prelicensing course by adding common terms. The board concluded that it is essential for licensees to know the terms and definitions of their industry.

The board determined it is reasonably necessary to add (11) and (12) and clarify attendance and break requirements when attending board-approved courses. The ten-minute breaks are not in addition to the 90 percent attendance requirement. The amendments clarify that the course provider and student have some flexibility when a student arrives late to a course. The student is then required to attend the remaining course in its entirety. The amendments also clarify the current practice to make exception for the 100 percent attendance requirement for specific, unusual circumstances. With the mandate of 100 percent attendance, it is reasonable to give course sponsors the ability to use their judgment to allow for reasonable accommodations for people with medical conditions.

#### 24.210.812 APPLICATION FOR PROPERTY MANAGEMENT LICENSURE

(1) An applicant for a property management license must:

~~(a) submit a completed original application on forms approved by the board and pay the required fees;~~

~~(b) provide the account number and bank name where the property management trust account is held; and~~

~~(c) provide a recent 2" x 2" photo of the applicant.~~

(2) remains the same.

(3) Applicants for licensure as a property manager must submit proof of completing a ~~board approved~~ board-approved property management prelicensing course obtained within a period of 24 months, immediately preceding the date of the submission of the application.

(4) remains the same.

(5) The board will review all nonroutine applications.

AUTH: 37-1-131, 37-51-203, MCA

IMP: 37-51-202, 37-51-601, 37-51-603, MCA

REASON: The board is amending (1) to eliminate documentation that is no longer necessary for a property management application. The board no longer needs the property manager's trust account information since the licensee's compliance with trust account requirements may be verified via a signed statement. The board is eliminating the unnecessary requirement for an applicant's photograph as the board concluded that the picture of the exam candidate that is already included in the exam results is acceptable for licensee identification.

It is reasonable and necessary to add (5) and clarify for the public and applicants that the board has not authorized the department to issue licenses for any nonroutine applications without prior board review, as is the current practice. The board is proposing to define routine application at ARM 24.210.301 in this notice. All other applications not meeting the definition are to be considered nonroutine and require board review.

24.210.828 UNPROFESSIONAL CONDUCT FOR PROPERTY MANAGEMENT LICENSEES (1) through (3)(m) remain the same.

(n) violating the residential tenants' security deposits laws of ~~title~~ Title 70, chapter 25, MCA;

(o) violating the landlord and tenant residential and commercial laws of ~~title~~ Title 70, chapter 26, MCA;

(p) violating the Montana Residential Mobile Home Lot Rental Act of ~~title~~ Title 70, chapter 33, MCA;

(q) violating the Residential Lead-Based Paint Disclosure Program of ~~title~~ Title X, section 1018 of the United States Code;

(r) through (v) remain the same.

(w) failing, as a licensee, to repay the recovery account for any amounts paid from the account, based on an unsatisfied judgment against the licensee;

(x) through (z) remain the same.

(aa) committing any act of forgery, fraud, misrepresentation, deception, misappropriation, conversion, theft, or any other like act; or

(ab) failing to respond to a request from the board;

(ac) engaging in or conducting business as a property manager, or advertising as a property manager, or engaging in or conducting the business of a property manager at a time when the licensee's license has expired, is on inactive status, or has been cancelled; or

(ad) indicating on a renewal form that the licensee has completed all required continuing education as of the date of submission of the renewal form when the licensee has not completed the continuing education.

(4) and (5) remain the same.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

IMP: 37-1-131, 37-1-136, 37-1-306, 37-1-316, 37-1-319, 37-51-202, 37-51-508, 37-51-512, 37-51-601, 37-51-607, MCA

REASON: It is reasonably necessary to amend (3)(ac) to clarify that it is unprofessional conduct to advertise or otherwise conduct business as a licensee, when the property management license is expired, cancelled, or inactive. A license is required to performed licensed activity and it is unprofessional conduct for someone to perform those activities without a valid, current, and active license.

It is reasonable and necessary to add (3)(ad) to notify licensees that it is unprofessional conduct to indicate on the renewal form that they have met the continuing education (CE) requirements if they have not done so. The board notes that oftentimes licensees indicate the completion of CE when they intend to complete it before the renewal date, but then fail to meet that deadline. The board's data system identifies all licensees who have not met the education requirements, including those that incorrectly affirm completion when they have not met the requirements. The board sees this as renewing when not qualified and falsification of the renewal form, and notes that such conduct can result in license discipline, which involves significant time, effort, and expense.

24.210.829 NEW LICENSEE MANDATORY CONTINUING EDUCATION -- PROPERTY MANAGER (1) All new property management licensees are required to complete 12 hours of new licensee mandatory continuing education by the second renewal date as set by ARM 24.101.413, following their original license issue date. Six of those hours must consist of:

(a) through (c) remain the same.

(2) New property managers will receive an interim license that ~~expires~~ will terminate on the second renewal date as set by ARM 24.101.413, following their original license issue date.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

IMP: 37-1-306, 37-1-319, 37-51-603, MCA

REASON: The board is amending (2) to clarify that an interim license "terminates" if a licensee fails to meet the new licensee mandatory continuing education. An "expired" license carries a specific meaning pursuant to 37-1-141, MCA, and to use that term may misinform interim licensees that "expired" interim licenses may be reinstated as is allowed with regular licenses. However, interim licenses may not be reinstated. If an interim licensee fails to comply with the mandatory new licensee continuing education requirement, the interim license terminates and the licensee must reapply.

24.210.835 CONTINUING PROPERTY MANAGEMENT EDUCATION

(1) Each active licensee is required to annually complete a board-mandated core education course of the length established by the board every year. The board-mandated core education does not apply to meeting the continuing education requirement provided for in ~~subsection (2)~~, except as provided in ~~(17)~~ (16) and ~~(18)~~ (17).

(2) and (3) remain the same.

(4) The licensee must attend 90 percent of ~~each~~ the first hour and 100 percent of each additional hour of the approved course time in order to receive credit

for attendance. Reasonable accommodations will be made for people with medical conditions.

(5) remains the same.

(6) By August 1 of each year, the board will identify topics in which the 42 required hours of education must be obtained. The board, in its discretion, may adjust the topics at any time. A minimum of four hours must come from the mandatory topics identified by the board.

(7) No licensee may repeat a course for credit in the same reporting period, without the course receiving prior board approval.

(8) through (10) remain the same.

~~(11) All approved education must be available to all licensees.~~

~~(12) (11) All continuing education instructors or their designee course providers~~ must report licensee attendance at approved continuing education offerings to the board within 20 days of the course offering.

~~(13) (12) Instructors or their designee~~ The course provider must report all education attendance in a format approved and provided by the board.

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

~~(15) (14)~~ All continuing education courses must be taken and completed within the reporting period. No ~~carryover~~ carry over hours will be accepted from one reporting period to another, except as provided in ARM 24.210.829.

(16) through (18) remain the same, but are renumbered (15) through (17).

(18) Licensees completing continuing education in another jurisdiction or completing education that the licensee believes meets the topic requirements of the board, but which has not previously been submitted to the board for approval, may submit an individual course application for approval consideration.

(19) The completed individual course application and accompanying fee must be filed with the board office within 30 days of completion of the course. Failure to timely file the application will result in a late filing fee.

AUTH: 37-1-131, 37-1-136, 37-1-319, 37-51-203, MCA

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

REASON: The board determined it is reasonably necessary to amend (4) to clarify the attendance and break requirements when attending board-approved courses. The ten-minute breaks are not in addition to the 90 percent attendance requirement. The amendment clarifies that the course provider and student have some flexibility when a student arrives late to a course. The student is then required to attend the remaining course in its entirety. The amendments also clarify the current practice to make exception for the 100 percent attendance requirement for specific, unusual circumstances. With the mandate of 100 percent attendance, it is reasonable to give course sponsors the ability to use their judgment to allow for reasonable accommodations for people with medical conditions.

The board is amending this rule to eliminate the specific hour requirement reference from (6). The board has already set the continuing education (CE) hour requirements in (2) and it is not necessary to duplicate them here.



It is reasonably necessary to amend (7) to allow credit for duplication of course attendance, with prior approval from the board, under certain unique circumstances. The board acknowledges that the design and content of a course could be of a nature that licensees receive different information each time they complete the course. Prior board approval to repeat the same course during the same reporting period is necessary for a licensee to receive credit, and will only be approved under unique circumstances. A licensee may not apply by an individual continuing education request application and receive credit twice for completing the same course twice. The approval must be requested by the course developer.

The board is deleting (11) to no longer require that all courses be available to all licensees. This amendment will allow attendance at courses that are limited to a specific target audience. An example is the board "Rookie" course, which is only available to new sales licensees during their first licensing year. The board notes that at times, attendance by others may cause disruption in the education.

It is reasonably necessary to amend this rule to require that course providers report licensee hours rather than course instructors. The board notes that in most cases, course instructors are hired by a course provider to offer instruction and do not monitor attendance or award attendance credit. Referring to the course provider will include those instructors that do offer courses and monitor attendance.

It is reasonably necessary to add (18) and (19) to identify who may file individual course applications and establish the filing requirements. There are instances when licensees complete education they believe is equivalent to Montana board-approved education. In those instances, they may apply for course review by submitting an application, attaching necessary documents, and paying an administrative fee. Because of the staff workload necessitated by the annual requirement for continuing education and the need to eliminate the large volume of individual course applications submitted during the final days prior to renewal deadline, the board will require licensees to file complete applications within 30 days of course completion. The board anticipates that this requirement will provide adequate time for course review and help ensure that proper credit is awarded to licensees. If applications are submitted enough in advance, licensees will have enough time to take additional courses if a submitted course is denied credit. Failure to meet the filing requirement will result in a late filing fee.

24.210.840 CONTINUING PROPERTY MANAGEMENT EDUCATION -- COURSE APPROVAL (1) and (2) remain the same.

(3) Courses must be designed so that no more than ten minutes per hour 60 minutes are allowed for breaks in instruction. Break time may be accumulated and used in blocks at the instructor's discretion.

(4) The board or its designee may, at its discretion, and without requiring further qualification, approve courses from the approved topic list under the following instances:

(a) remains the same.

(b) courses which lead to designations or certifications by ~~board-recognized~~ board-recognized trade or professional associations.

(5) remains the same.

(6) It is the responsibility of the licensee to verify that courses are approved for Montana prior to completing the course for credit.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

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

REASON: It is reasonably necessary to amend (3) to clarify that ten-minute breaks are for each 60-minute period of time, not for each "hour" as defined by the board. This clarification is necessary because the board's definition of an "hour" of education is 50 minutes of instructional time. The board notes that instructors, at their discretion, may teach for longer periods of time and combine break times, allowing for longer breaks.

The board is adding (6) to clarify that licensees are responsible to ensure that courses they take are approved by the board for Montana or meet continuing education requirements for Montana. Some courses, particularly distance education courses, are marketed and offered nationally, without getting approved in all jurisdictions. It is up to licensees to make sure they are taking courses that will satisfy Montana licensing requirements. Although a course may be approved after attendance, if the licensee does not verify Montana approval prior to attending, the licensee risks having the course disallowed.

5. The proposed new rules provide as follows:

NEW RULE I PUBLIC PARTICIPATION (1) The Board of Realty Regulation adopts and incorporates by reference the public participation rules of the Department of Commerce, as listed in ARM Title 8, chapter 2, except that the board does not adopt ARM 8.2.202(1)(b), which allows for public participation in the granting or denying of a license for which a hearing is required. The public is entitled to observe, but not participate in licensing decisions and other contested cases as allowed by law.

AUTH: 2-3-103, 37-51-203, MCA

IMP: 2-3-103, MCA

REASON: Neither the board or the department currently have public participation rules. Statute requires the board to adopt coordinated rules for public participation. It is reasonable and necessary to adopt by reference the public participation rules of the Department of Commerce, to which the board was administratively attached prior to 2001, except that the board does not adopt the portion of Department of Commerce rules that seem to allow public participation in licensing decisions. Neither will the board allow the public to participate in disciplinary decisions. No other law requires public participation in board licensing or disciplinary decisions, and the board is of the opinion that these decisions are the board's alone. The public will still be allowed to observe the workings of the board as allowed by law.

NEW RULE II COURSE PROVIDER (1) All board-approved continuing education courses must be administered by a board-approved course provider.

(2) Each course provider must make application to the board and be approved prior to offering board-approved continuing education.

(3) Course providers must administer all continuing education courses in compliance with board-established rules. Failure to administer courses in a compliant manner may result in withdrawal of their course provider approval.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

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

REASON: The board determined it is reasonably necessary to adopt New Rules II and III to broadly outline the licensure requirements for course providers and the duties of course providers. These new rules will be set forth in subchapter 6 for brokers and salespersons, and in subchapter 8 for property managers.

These new rules, in conjunction with other amendments in this notice, shift the responsibility for the administration of all approved continuing education courses from the instructor to the course provider. A course provider, as defined in ARM 24.210.301 in this notice, is not necessarily the same person/entity who teaches the course. A course provider arranges for the education and then typically hires an instructor to actually teach. It is the general practice for a course provider to be the responsible party and the instructor is merely a paid expert, rather than the course administrator. In the rare case where those duties are performed by the course instructor, that instructor will also serve as the course provider and should be registered as such.

NEW RULE III COURSE PROVIDER (1) All board-approved continuing education courses must be administered by a board-approved course provider.

(2) Each course provider must make application to the board and be approved prior to offering board-approved continuing education.

(3) Course providers must administer all continuing education courses in compliance with board-established rules. Failure to administer courses in a compliant manner may result in withdrawal of their course provider approval.

AUTH: 37-1-131, 37-1-319, 37-51-203, MCA

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

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2323, or by e-mail to [dlibsdrre@mt.gov](mailto:dlibsdrre@mt.gov), and must be received no later than 5:00 p.m., April 25, 2012.

7. An electronic copy of this Notice of Public Hearing is available through the department and board's web site on the World Wide Web at [www.realestate.mt.gov](http://www.realestate.mt.gov). The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official

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

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Realty Regulation, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2323; e-mailed to [dlibsdrre@mt.gov](mailto:dlibsdrre@mt.gov); or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 3, 2011, by regular mail.

10. Barb McAlmond, program manager, has been designated to preside over and conduct this hearing.

BOARD OF REALTY REGULATION  
CINDY WILLIS, CHAIRPERSON

/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 March 12, 2012

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 37.107.117 pertaining to ) PROPOSED AMENDMENT  
Montana marijuana program )

TO: All Concerned Persons

1. On April 12, 2012 at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rule.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on April 5, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

- 37.107.117 FEES (1) The department will assess the following fees:
- (a) registered cardholder application fee of ~~\$25~~ \$75;
  - (b) through (d) remain the same.
  - (e) annual registered cardholder renewal fee of ~~\$10~~ \$75.
  - (2) and (3) remain the same.
  - (4) Renewal applications received by the department after the expiration date will be treated as new applications and ~~require a \$25 fee.~~

AUTH: 50-46-344, MCA  
IMP: 50-46-344, MCA

4. STATEMENT OF REASONABLE NECESSITY

In 2011, Montana's 62nd Legislature passed Senate Bill 423 (SB423) which repealed the Medical Marijuana Act and established the Montana Marijuana Act (Act), and revised laws relating to the use of marijuana for certain debilitating medical conditions. The Act includes many new requirements for provider/marijuana infused products providers (MIPPs) and registered cardholders. Among the new requirements, providers must submit fingerprints to the department for a federal

criminal background check, all applicants must be Montana residents and possess a Montana driver's license or state-issued identification, and probationers and parolees are prohibited from being patients or provider/MIPPs.

Since the implementation of the Act, there has been a reduction in the number of patient and provider/MIPP applicants for the program. In May 2011, prior to the new law going into effect, there were 31,522 active registered cardholders and 4,755 active provider/MIPPs. There are currently 14,364 active registered cardholders and 533 active providers/MIPPs (February 2012). The Montana Marijuana Program is solely funded by state special revenue collected through program application fees. The reduction in applications has significantly reduced the revenues collected by the program. In light of this reduction, the application fees must be adjusted in order to sustain the program without a deficit.

The current program fees are based on revenue projections prior to SB423 taking effect. The fees are \$25 for a new registered cardholder application or a late renewal (received after the expiration date), \$10 for a renewal application, and \$50 for a provider or marijuana infused products provider (MIPP) application. Fees for providers and MIPPs were established using the cost charged by the Department of Justice/Federal Bureau of Investigation (FBI) for conducting fingerprint background checks. The department considered the costs of processing these background checks in addition to modifications to the administrative and business processes necessary when establishing the fee at \$50. Registry fees were considerably higher at one time. In 2005, at the inception of the program, a new patient application fee was \$200, later decreased to \$100 before decreasing again and remaining at \$50 for several years. Fees were reduced to their current levels in 2009 when program revenues exceeded the projections.

Based on the current and projected decline of applications and enrollments over the next fiscal year, the fees must be increased in order for the program to remain self-supporting. The proposed new fees are \$75 for a new registered cardholder application and \$75 for a registered cardholder renewal. The proposed fee for new and a renewal registered cardholder application is the same because processing time is essentially equal. The department proposes the provider fee be left at \$50.

The fees were not raised immediately when the law changed because the department could not project the effect the law changes would have on application and registry numbers. Six months of registry data is now available and was used to analyze emerging trends based on the new requirements which took effect in July 2011. The decision to raise the program fees came after careful analysis of the current workload, staffing, program expenses, and projected revenues.

The new law put into practice several new administrative (program) requirements which contain specific costs. For example, SB423 requires that registry cards be laminated before sending to cardholders. In order to implement this requirement, the department worked with the General Services Division to purchase equipment that places a UV coating over the registry cards before they are sent to cardholders.

The cost of this equipment was significant and had to be purchased using funds generated by the program. Additionally, postage and printing costs for the program have increased considerably.

A large part of the State Fiscal Year (SFY) 2012 budget is dedicated to temporary personnel services. These services were imperative to the success of the program, particularly through the transition from the old law to the new law, as the volume of data entry, phone calls, and walk-ins was staggering. In October 2011, three permanent staff people were hired and the program no longer utilizes temporary staff. There are five FTE in the program; a program manager, and four licensing permit technicians. A fourth licensing permit technician position became vacant in January and the position remains open in order to reduce program expenditures. This will save the program approximately \$12,500 in SFY 2012.

Further reducing FTE was considered, however, reducing staff at this time would not be an efficient solution to cut program expenditures. While the number of registry applications has decreased, the amount of paperwork, required documentation, and program inquiries has increased considerably. For example under the former law, new and renewal applications were one page, as were doctor's statements. Caregivers had no applications and no fee. They were simply named by a patient and added to the registry as long as they had no felony drug offenses (a named-based background check was conducted). Data entry for a one-page application was minimal and could be done rather quickly. As a result of the program changes enacted by SB423, the new registered cardholder application and accompanying doctor's statement requires additional data entry into the registry and a high level of scrutiny. Three addresses are captured on the application, along with patient and provider signature, a copy of a State of Montana issued ID or driver's license, a Landlord Permission Form (if applicable), doctor's notes and often two doctor's signatures along with their Montana license number and other pertinent information.

The provider application process is lengthy and is an entirely new business process for the work unit. Providers require an application similar to a registered cardholder which includes the same verifications. Providers must also submit fingerprint cards to the department to facilitate a fingerprint background check by the FBI. Fingerprint cards must be requested by provider applicants and sent to those provider applicants by program staff. When the cards are completed and received by the department they are forwarded to the Department of Justice (DOJ). When the cards and criminal history documents (rap sheet) are received back from DOJ the background check must be reviewed and disqualifying criminal history assessed in addition to activating or denying the provider's application. The new processes required for a provider/MIPP application take substantial staff time to complete and the department did consider raising the provider application to cover such costs. However, given the small number of provider/MIPPs currently registered in the program, the provider fees would have to be raised considerably in order to make a significant impact on program revenues. Additionally, there is a great need for providers to assist patients throughout the state and instating a higher fee may deter individuals from applying to be providers.

Due to the new program requirements, extensive updates have been made to the registry database in order to capture new information and generate reports. Information Technology (IT) expenditures were high in the first half of SFY 2012 and more system enhancements are necessary to be in compliance with the Act. The Act requires that lists of providers in local jurisdictions are sent to law enforcement. A system enhancement has been designed to deliver the reports to jurisdictions through the Montana Criminal Justice Information Network. However, the requirement has not been met and may become a manual process in order to reduce programming costs. Another requirement is that individuals cannot be on the registry if they are under the supervision of the Department of Corrections (DOC). A system enhancement has been designed to check every applicant, as they are entered into the database, to ensure they are not under supervision. This enhancement is on hold and all applicants are being checked manually, by marijuana program staff, through the DOC Correctional Offender Network, in order to avoid the additional IT expenditure. This manual process adds additional processing time to patient and provider/MIPP applications.

Phone calls, general program inquiries, and "walk-ins" from registered cardholders, providers, applicants, and law enforcement have also increased. To increase efficiency, a new telephone system was recently installed in the work unit. During business hours, calls are answered as they come in rather than being returned after a voicemail is left. This not only ensures good customer service but also protects patients, providers, and law enforcement when verification of an individual's card status is necessary. Staff must be available to accept phone calls during business hours and without 4 FTE to cover the phones, the program would need to revert back to the old system which was ineffective and inefficient.

If program application fees are not increased at this time, the department will have to find additional ways to decrease expenditures. Based on the current workload, indirect costs, and the resources needed to maintain the registry it is not likely the program could reduce costs enough to remain self-supporting while maintaining even a minimum level of efficiency.

#### Fiscal Impact

As registry numbers continue to decrease, it is difficult to estimate how many currently registered cardholders and future registry applicants this fee increase will impact. Considering program projections for new and renewal applicants, and the current fees of \$10 for a renewal and \$25 for a new application, the cumulative cost of the increase to registered cardholders is approximately \$799,075 annually.

5. These rule amendments will be effective June 1, 2012, or the day after publication of the adoption notice in the Register, whichever is the later date.

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



submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., April 19, 2012.

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

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

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

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

/s/ Kurt R. Moser  
Rule Reviewer

/s/ Hank Hudson for  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State March 12, 2012.

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

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
37.95.102, 37.95.128, 37.95.132, ) PROPOSED AMENDMENT  
37.95.184, 37.95.623, 37.95.702, )  
37.95.1001, 37.95.1002, 37.95.1003, )  
37.95.1004, 37.95.1005, 37.95.1011, )  
37.95.1015, 37.95.1016, and )  
37.95.1021 pertaining to infant care )

TO: All Concerned Persons

1. On April 11, 2012, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in Room 207 of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on April 4, 2012, to advise us of the nature of the accommodation that you need. Please contact Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

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

37.95.102 DEFINITIONS (1) through (11) remain the same.

(12) "Family day care home" means a private residence in which day care is provided to three to six children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to no more than three children under two years of age unless care is provided ~~for infants only~~ exclusively for children under age two. For facilities providing care ~~only for infants~~ exclusively to children under age two, family day care home means a place in which supplemental parental care is provided for up to four infants children under the age of two. No other children shall be in attendance.

(13) "Group day care home" means a private residence or other structure in which day care is provided to seven to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to seven to 12 children with no more than six children under two years of age, unless care is provided for infants only. For facilities providing care only for infants, group day care home means a place in which

supplemental parental care is provided for up to eight infants. No other children shall be in attendance.

(a) Facilities caring for ~~infants~~ exclusively for children under age two shall maintain a staff/infant ratio of one caregiver for each four infants in attendance.

(b) Facilities may not provide care to more than three children under the age of two years while also caring for children over two years of age when only one caregiver is present.

(14) through (16) remain the same.

(17) "Infant" means a child under ~~the age of 24~~ 19 months of age.

(18) through (48) remain the same.

(49) "Toddler" means a child who is ~~24~~ 19 months of age to 36 months of age.

(50) through (52) remain the same.

AUTH: 52-2-704, 53-4-212, 53-4-503, MCA

IMP: 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-2-201, 53-4-212, 53-4-601, 53-4-611, 53-4-612, MCA

37.95.128 DOCUMENTATION OF THE ABSENCE OF UNUSUAL HEALTH RISKS FOR ~~INFANTS~~ CHILDREN UNDER AGE TWO (1) remains the same.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

37.95.132 TRANSPORTATION (1) through (7) remain the same.

(8) Facilities providing transportation for children under six years of age or children six years of age but weighing less than 60 pounds shall comply with the following requirements:

(a) through (c) remain the same.

(d) there shall be one adult in addition to the driver for each four ~~infants~~ children under age two being transported; and

(e) through (9) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, 52-2-733, MCA

37.95.184 DAY CARE FACILITIES: HEALTH HABITS (1) through (2)(c) remain the same.

(3) If a child has an accident causing wet or soiled clothes, the child must be changed promptly.

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.623 DAY CARE CENTERS: CHILD-TO-STAFF RATIOS (1) The child-to-staff ratio for a day care center is:

(a) 4:1 for ~~infants~~ children zero months through 23 months;

(b) through (d) remain the same.

(2) ~~Only the day care center director, primary care-givers and aides may be counted as staff when determining the staff ratio.~~ When children of different ages are mixed, the ratio for the youngest child in the group must be maintained.

(3) Only the day care center director, primary caregivers, and aides may be counted as staff when determining the staff ratio.

AUTH: 52-2-704, MCA

IMP: 52-2-703, 52-2-704, 52-2-723, 52-2-731, MCA

37.95.702 GROUP DAY CARE AND FAMILY DAY CARE HOMES, STAFFING, AND ADDITIONAL REQUIREMENTS (1) remains the same.

(2) There shall be no more than six ~~infants~~ children under the age of two in a group day care home or three ~~infants~~ children under the age of two in a family day care home at any time, unless care is provided exclusively for ~~infants only~~ children under the age of two.

(3) A family day care facility that cares exclusively for children under the age of two may not have more than four children present. A group day care facility that cares exclusively for children under the age of two must have no more than four children present unless there are two caregivers.

(3) through (5) remain the same, but are renumbered (4) through (6).

AUTH: 52-2-704, MCA

IMP: 52-2-704, 52-2-723, 52-2-731, MCA

37.95.1001 DAY CARE FACILITIES CARING FOR INFANT'S, AND TODDLER'S DIAPERING AND TOILET TRAINING (1) through (5) remain the same.

(6) ~~Children~~ Infants and toddlers shall not be left unattended on a surface from which they might fall.

(7) All toilet articles shall be ~~identified and separated as to~~ specifically labeled for each child ~~infant and toddler.~~ Each item must be separated and kept in a sanitary condition.

(8) remains the same.

(9) Toilet training shall be initiated when the ~~child~~ toddler is ready and in consultation with the ~~child's~~ toddler's parents or placement agency. There shall be no routine attempt to toilet train children under the age of 18 months.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

37.95.1002 DAY CARE FACILITIES CARING FOR CHILDREN'S INFANT'S AND TODDLER'S WET OR SOILED CLOTHING (1) Wet or soiled clothing shall be changed promptly. Spare clothing shall be available in the event that a child's clothing becomes wet or soiled and it is the responsibility of the parent to care for the wet or soiled clothing.

~~(2) If an older, toilet trained child has an accident causing wet or soiled clothes, the child shall be changed promptly.~~

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

37.95.1003 DAY CARE FACILITIES CARING FOR INFANT'S, AND TODDLER'S FEEDING (1) An individualized diet and feeding schedule shall be provided according to a written plan submitted by the parents or by the ~~child's~~ infant's physician with the knowledge and consent of the parents, guardian, or placement agency. A change of diet and schedule shall be noted on each ~~child's~~ infant's daily diet and feeding schedule.

(2) A day's supply of formula or breast milk in nursing bottles or formula requiring no more preparation than dilution with water shall be provided by the parents, unless an alternative agreement is reached between the parents and provider ensuring that the infant's nutritional needs are sufficiently met. Bottles of formula or breast milk shall be clearly labeled with each infant's name and date and immediately refrigerated. After use bottles shall be thoroughly rinsed before returning to the parent at the end of the day. Special dietary foods required by ~~the~~ infants and toddlers shall be prepared by the parents.

(3) Bottles shall not be propped. Infants too young to sit in high chairs shall be held in a semi-sitting position for all bottle feedings. ~~Children who use a bottle should not be allowed to lie on their backs when drinking from the bottle. Older infants and toddlers shall be fed in safe high chairs or at baby feeding tables. Infants six months of age or over who show a preference for holding their own bottles may do so provided an adult remains in the room and within observation of the infant. Bottles shall be taken from the infant when the child finishes feeding, when the bottle is empty and while the infant is sleeping.~~

(a) Infants and toddlers who use a bottle shall not be allowed to lie on their backs when drinking from the bottle.

(b) Older infants and toddlers must be fed in safe high chairs or at baby feeding tables.

(c) Infants six months of age or over who show a preference for holding their own bottles may do so provided an adult remains in the room and within observation of the infant.

(d) Bottles and spill-proof cups (sippy cups) must be taken from the infant or toddler when they finish feeding, when the bottle or cup is empty, and while they are sleeping.

(4) If the parent is unable to bring sufficient or usable formula or breast milk, the facility may use commercially prepared and packaged formulas. Older infants and toddlers shall be provided suitable foods which encourage freedom in self-feeding. Unused ~~infant~~ food shall be stored in the original container and kept separate from other foodstuffs. Dry cereal, cookies, crackers, breads, and similar foods shall be stored in clean, covered containers.

(5) remains the same.

(6) If bottles and nipples are to be used by the facility, they must be ~~sanitized by boiling for five minutes or more just prior to refilling. Terminal (one-step)~~

~~sterilization of bottles, nipples and formula is acceptable~~ cleaned and sanitized using generally accepted means of sanitation such as washing in a dishwasher or by washing in hot water, rinsing, and boiling for one minute.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

~~37.95.1004 DAY CARE FACILITIES CARING FOR INFANT'S AND TODDLER'S, BATHING~~ (1) Bathing shall not be done routinely by the facility but if required:

(a) ~~no child shall be left unattended in the bathing area~~ infants and toddlers must be directly supervised when being bathed;

(b) bathing materials shall be sanitized after bathing ~~a child~~ an infant or toddler;

(c) remains the same.

(d) arrangements shall be made so ~~a child~~ the infant or toddler cannot turn on hot water while being bathed. Water supply to bathing area will not be over 120°F; and

(e) the bathing area shall be out of drafts and provisions should be made so the ~~child~~ infant or toddler may be completely dried after a bath.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

~~37.95.1005 CHILD CARE FACILITIES CARING FOR INFANT'S AND TODDLER'S, SLEEPING~~ (1) There shall be adequate opportunities for sleep periods during the day suited to the infant's' and toddler's individual needs.

(2) Unless the ~~child's~~ parent has provided medical documentation from a health care provider ordering otherwise, ~~infants~~ children under age two shall be placed on their back and on a firm surface to reduce the risk of Sudden Infant Death Syndrome (SIDS).

(3) Each infant shall be provided with a crib or play pen for sleeping. ~~until, at~~ At the discretion of the parent and provider, they are safe on a cot or mat a toddler may be allowed to sleep on a cot or mat as long as a safe sleep environment is provided.

(a) Infants and toddlers shall not be routinely allowed to sleep in a car seat, infant swing, or other infant apparatus.

(b) remains the same.

(4) Cribs shall be made of durable, cleanable, nontoxic material, and have secure latching devices. Cribs shall have no more than 2 and 3/8 inches of space between the vertical slats. ~~Mattresses shall fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses shall be waterproof and easily sanitized. Cribs, cots, or mats shall be thoroughly cleansed before assignment to another infant.~~ No later than December 28, 2012, all cribs must meet the requirements for full-size baby cribs and non full-size baby cribs as specified by the Consumer Product Safety Commission at 16 CFR Part 1219 (2011)

and 16 CFR Part 1220 (2011), incorporated by these references. A copy of the requirements for full-size baby cribs and non full-size baby cribs is available at <http://www.dphhs.mt.gov/earlychildhood/cribrequirements.shtml>, or by contacting the Montana Child Care Licensing Program at P.O. Box 202953, Helena, Montana 59620; Phone: (406) 444-2012.

(5) Mattresses must fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses must be waterproof and easily sanitized. Cribs, cots, or mats must be thoroughly cleansed before assignment to another infant or toddler.

~~(5)~~ (6) Cribs, cots, or mats shall be spaced to allow for easy access to each child infant and toddler, adequate ventilation, and easy exit. Aisles between cribs or cots shall be kept free of obstructions while cribs or cots are occupied. The use of stackable cribs for infants is permitted until the infants reach one year of age or weigh 26 pounds, whichever comes first.

~~(6)~~ (7) All pillows, quilts, comforters, heavy blankets, sheepskins, bumper pads, stuffed toys, and other soft products shall be removed from the crib and play pen. ~~If blankets are used, the infant's head shall remain uncovered during sleep.~~

(a) If a lightweight blanket is used, the child's feet must be placed at the foot of the crib or play pen and the blanket must be tucked along the sides and foot of the mattress. The blanket should not come up higher than the child's chest.

~~(7)~~ (8) Each infant and toddler shall have been provided by the parent with a clean washable blanket or other suitable covering for his use while sleeping. Each infant's and toddler's bedding shall be stored separate from bedding used by other ~~infants~~ children.

~~(8)~~ (9) All cries of infants and toddlers shall be investigated.

(10) The provider and any caregiver who provides care to children under age two must receive training in an approved safe-sleep curriculum before providing care to children under two. Facilities licensed or registered before the effective date of these rules will have until July 31, 2013 to complete this training.

(11) Providers must develop a written policy that describes the practices to be used to promote safe sleep when children under age two are napping or sleeping.

(12) All caregivers shall sign an acknowledgement indicating that they have read and understood the provider's policy outlined in (11).

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

37.95.1011 DAY CARE FACILITIES CARING FOR INFANT'S AND TODDLER'S, ACTIVITIES (1) remains the same.

(2) An infant or toddler who is awake shall not spend more than 30 minutes of consecutive time confined in a crib, playpen, jump chair, walker, or highchair.

(3) Each infant and toddler shall have individual personal contact and attention by the same adult on a regular daily basis at least once each hour during nonsleeping hours. Examples of personal contact and attention include being held, rocked, taken on walks inside and outside the center, talked to, and played with.

(a) remains the same.

(4) There shall be provisions for the infant and toddler to safely explore and investigate the environment. There shall be both stimulation and time for quiet activity. Infants and toddlers shall be taken outside for some period during each day in good weather.

(5) Each infant and toddler shall be allowed to maintain the child's own pattern of sleeping and waking period according to instructions from the parents.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

37.95.1015 DAY CARE FACILITIES CARING FOR INFANT'S AND TODDLER'S, OUTDOOR ACTIVITIES (1) ~~Children~~ Infants and toddlers shall be protected from draft and prolonged exposure to direct sunlight. With the parent's written permission, sun screen shall be applied to children over six months old when outdoor conditions dictate.

(2) ~~The outdoor activity area shall be adjacent to the facility, fenced and free of hazards which are dangerous to the health and life of the children. There must be an outdoor play area on the facility property. The play area must be fenced in accordance with ARM 37.95.121 and free of hazards which are dangerous to the health and life of the children. Every time a child~~ an infant or toddler is outdoors, ~~the child~~ they must be supervised by a caregiver.

(3) and (4) remain the same.

AUTH: 52-2-704, MCA

IMP: 52-2-731, 52-2-736, MCA

37.95.1016 DAY CARE FACILITIES CARING FOR INFANT'S AND TODDLER'S, EQUIPMENT (1) Feeding tables equipped with a harness or highchairs with a broad base and a harness for securing the ~~child~~ infant or toddler, shall be provided for every four ~~children~~ infants or toddlers.

(2) The facility shall provide, adequate and safe equipment such as ~~walkers cribs~~, swings, playpens, ~~jump chairs~~, and adult rocking chairs. All equipment must meet current federal safety regulations.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

37.95.1021 DAY CARE FACILITIES CARING FOR INFANT'S AND TODDLER'S, SPECIAL REQUIREMENTS FOR DAY CARE CENTERS (1) remains the same.

(2) Individual storage space ~~that is labeled for the infant's clothing and other personal items~~ shall be provided and labeled for each infant and toddler.

(3) Each infant shall be assigned a ~~primary caregiver~~ who is routinely responsible for that infant. There shall be sufficient staff so that an adult is always present and directly supervising infants.

(4) remains the same.



(5) Play areas for infants shall be separate from ~~elder children's~~ play areas used by children over two years of age, or not be used for any ~~other group of~~ children over age two while being used for infants. Sleeping areas shall be separate from play areas.

AUTH: 52-2-704, MCA

IMP: 52-2-731, MCA

#### 4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.95.102, 37.95.128, 37.95.132, 37.95.184, 37.95.623, 37.95.702, 37.95.1001, 37.95.1002, 37.95.1003, 37.95.1004, 37.95.1005, 37.95.1011, 37.95.1015, 37.95.1016, and 37.95.1021.

In 2008, several child care providers through their local representative Senator Roy Brown requested the department address regulatory concerns about infant care. As a result of this request, the department conducted child care provider forums throughout Montana focusing on the subject of infant/toddler care in child care facilities. These meetings were held in Helena, Bozeman, Billings, Great Falls, Kalispell, Miles City, and Missoula.

One specific concern consistently addressed throughout the forums was the need to change the definition of "infants" and "toddlers." The department agreed with this recommendation; in making this change, the new definition would be more consistent with national recommendations which uniformly apply to developmentally appropriate practices.

In addition to the comments received through the child care provider forums, department staff conducted significant research concerning infant/toddler care. The department reviewed recommendations and guidelines established through the American Academy of Pediatrics (AAP), the National Resource Center for Health and Safety in Child Care (NRCHSCC), Zero to Three and The National Association for the Education of Young Children (NAEYC). The department also contacted the National Child Care Information Center (NCCIC) and received additional information from surrounding states concerning infant/toddler care, ratios, and age definitions.

The Consumer Product Safety Commission implemented new federal guidelines in December 2010 with regard to infant/toddler cribs. Specifically, the commission has banned "drop side" cribs. This was due in part to the high number of serious injuries reported. Montana DPHHS along with most states has agreed to prohibit "drop side" cribs in child care facilities in order to protect the health and well-being of children in child care facilities. This change may require additional costs from providers in order to purchase equipment that meets these requirements. However, these are costs associated with child care facilities that would be necessary in order to provide equipment needed for children in care. In addition, there are opportunities to obtain

funding through provider mini-grants in order to assist providers in purchasing sleep equipment that would meet the new standards.

As part of a periodic review, the department is amending its rules throughout to eliminate outdated and unnecessary provisions, clarify language as a result of definitional changes, and align terminology with language currently used within the industry.

Many of the changes are being made to implement better organization, proper rule numbering, and to correct grammatical and spelling errors. Punctuation is amended to comply with ARM rule formatting requirements.

#### ARM 37.95.102

The department is proposing to amend the definitions as follows:

In (12) and (13) the definition of "family day care home" and "group day care home" has been changed in order to accommodate changes to the definition of an "infant." In this change the term "infant" was deleted and was replaced with language specific to children under two years of age. The department has made this change accordingly throughout this proposed rule amendment. New language was also added in (13)(b) in order to clearly define the number of children, under age two, allowed when operating with one caregiver.

In (17) the definition of "infant" has been changed to meet the ages consistent with national recommendations and developmentally appropriate practices.

In (49) "toddler" has been changed to meet the ages consistent with national recommendations and developmentally appropriate practices.

#### ARM 37.95.128, 37.95.132, 37.95.702, and 37.95.1005

The term "infant" was replaced with "children under age two" to reflect the proposed changes in ages as a result of amendments to definitions.

#### ARM 37.95.184

Language regarding toilet training in (3) was moved from ARM 37.95.1002 as the regulation is specific to health issues for children of all ages, not just infants and toddlers.

#### ARM 37.95.623

Language in (2) was added to allow for circumstances in day care centers when children can be cared for in mixed-age groupings. Further, the proposed language specifies how facilities are to consider their ratios when providing care for mixed-aged groups. Licensing surveys have found that facilities do utilize mixed-age

groupings; there is a foundation under developmentally appropriate practices that agrees with this concept. Mixing ratios with the right boundaries can be beneficial for children.

ARM 37.95.702

Language in (3) was added to the rule in order to define the number of infants allowed when a group day care facility provides care exclusively for children under age two. The current rule only addresses exclusive infant care for family day care providers.

ARM 37.95.1002

Language in (2) was moved under ARM 37.95.184(3) as the regulation is specific to health issues for children of all ages, not just infants and toddlers.

ARM 37.95.1003

The language in (3)(a) through (d) was broken down into four subsections in order to clearly differentiate between each section. The department included "spill-proof cups (sippy cups)" in (d), in addition to bottles, as the use of these cups is considered equivalent to the use of a bottle; however, current rules do not address these cups, thus making enforcement difficult. Licensing surveys have found that these cups are commonly used by infants and toddlers. These changes will allow the department to properly enforce this requirement.

The language in (6) was removed because it is no longer a general accepted practice. It was replaced with "generally accepted means." In addition to boiling, there are other "generally accepted means" which is why the new language is included. This language was obtained through the National Resource Center for Health and Safety in Child Care and is considered an acceptable practice for cleaning and sanitizing bottles and nipples.

ARM 37.95.1005

Language in (3) was added to specify that infants must sleep in a crib or play pen as per the recommendations from the National Resource Center for Health and Safety in Child Care.

Language in (4) was added to incorporate by reference new federal requirements regarding baby cribs.

Language in (7) was added to specify the use of a "lightweight" blanket which is in accordance with AAP recommendations.

Language in (10) was added so that providers will be aware of additional guidelines surrounding safe-sleep practices.

Language in (11) was added to emphasize the importance of safe-sleep information being shared with parents and staff members.

Language in (12) was added to ensure that caregivers review a provider's safe-sleep policy.

#### ARM 37.95.1015

In (1) the term "written" was included in order to clarify that permission for the use of sunscreen must be obtained from the parent in writing, not just verbally. Sunscreen is recognized as a topical medication, thus necessitating written permission for its use. The requirements for medication administration, found in ARM 37.95.181, further solidify that sunscreen is considered an over-the-counter (OTC) medication which needs a written authorization for its use.

The language in (2) was changed to mandate that a play area must be located on the facility property. In the past, the rule allowed for a play area adjacent to the property. As a result, the department has validated a higher number of health and safety noncompliances involving the use of an adjacent play area than in the past.

#### ARM 37.95.1021

The language "that is labeled" in (2) was struck and replaced with "and labeled for each infant and toddler." The department made this change so that the intent of the rule was clearly stated.

The term "primary" in (3) was struck as it refers to the role defined as a "primary caregiver" not an individual who routinely cares for the child. This was replaced with language that clearly states the intent of the rule.

Licensing surveys have revealed that the trend being implemented by child care centers often start to transition children ages 18-24 months to the next age group in order to meet the developmental needs of that child. The proposed changes in (5) will allow children over 18 months to be mixed with older children while still prohibiting children over age two being mixed with the younger children. The latter consideration allows the developmental milestone to be met while protecting the health of children younger than 18 months.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kenneth Mordan, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail [dphhslegal@mt.gov](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., April 19, 2012.

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

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

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

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

/s/ Kurt R. Moser  
Rule Reviewer

/s/ Laurie G. Lamson for  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State March 12, 2012.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I relating to property tax abatement for gray water systems )  
)  
) NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

TO: All Concerned Persons

1. On April 16, 2012, at 11:00 a.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, in Helena, Montana, to consider the adoption of the above-stated rule.

Individuals planning to attend the hearing shall enter the building through the east doors of the Sam W. Mitchell Building, 125 North Roberts, Helena, Montana.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Revenue no later than 5:00 p.m., April 6, 2012, to advise us of the nature of the accommodation that you need. Please contact Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail canderson@mt.gov.

3. The proposed new rule does not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rule provides as follows:

NEW RULE I APPLICATIONS FOR PROPERTY TAX ABATEMENT FOR GRAY WATER SYSTEMS

(1) To be eligible for a gray water system tax abatement, the property must have a gray water system in compliance with 75-5-305, 75-5-325, 75-5-326, and 75-5-327, MCA, and be either:

(a) a newly constructed residential dwelling; or

(b) a newly constructed multiple dwelling project. A multiple dwelling project must be a single or multiunit structure for a minimum of 25 occupants.

(2) Eligible residential or multiple dwelling projects may receive an abatement of nine percent of their taxable market value during the course of construction and for ten years following their date of completion.

(3) The property owner of record, or the property owner's agent, must file an application for property tax abatement on a form available from the local department field office.

(4) To be eligible, an application must be filed with the local department field office no later than one year after the project's completion date.

(5) An application for property under construction received on or before April 15 will be effective for the current and following ten tax years.

(6) An application for a completed project received on or before April 15 will be effective for the current and following nine tax years.

(7) An application for a completed project received after April 15 of the current tax year will not be effective for the current tax year, but will be effective for the following nine tax years.

(8) Certification from the local health board must accompany the application. The certification must:

(a) state that the property is under construction and includes an eligible gray water system, or that the property has been constructed with an eligible gray water system;

(b) identify the property owner;

(c) identify the property by its legal description; and

(d) identify an estimated date of completion.

(9) The one-year period for applying for an abatement for a multiple dwelling project begins:

(a) upon the completion of the residential units; or

(b) after the completion of the first residential unit if construction occurs over a multiyear period.

AUTH: 15-1-201, MCA

IMP: 15-24-3201, 15-24-3202, 15-24-3203, 15-24-3204, 75-5-305, 75-5-325, 75-5-326, 75-5-327, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to properly implement Senate Bill 265 (Title 15, chapter 24, part 32, MCA), as enacted by the 2011 Legislature, which establishes a tax abatement for gray water systems for newly constructed residences and newly constructed multiple dwelling projects.

The proposed rule is necessary to make the operation requirements and timeline of this law clear and understandable for taxpayers; local governments; those engaged in the construction of gray water systems; and local health boards and their staff.

Further, the proposed rule is necessary to harmonize the granting of the abatements with the annual process of constructing the property tax rolls for local government, so that the abatement process does not complicate or delay the annual certification of values to the counties.

Finally, the proposed rule is necessary to protect the right of taxpayers to appeal an abatement denial on a reasonable timely basis in relation to the date of the certification of values.

Sections (1) and (2) identify which properties are eligible for the nine percent tax abatement during the course of construction and for ten years following their date of completion.

Section (3) informs the property owner that they must file for the abatement on an application form that is available at the local department field office.

Section (4) specifies that the tax abatement is not available unless the property taxpayer files for the abatement within one year after the construction is complete.

Sections (5), (6), and (7) provide deadlines for receiving an application for the tax abatement and provide for how each deadline affects the length of the

abatement.

Section (8) lists what information in the form of a certification from the local board of health must accompany the application.

Section (9) specifies when the one-year application period begins for a multiple dwelling project.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Cleo Anderson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-5828; fax (406) 444-4375; or e-mail [canderson@mt.gov](mailto:canderson@mt.gov) and must be received no later than April 20, 2012.

5. Cleo Anderson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

6. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Current Rulemaking Actions – Published Notices" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

7. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the person in 4 above or faxed to the office at (406) 444-4375, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary sponsor of Senate Bill 265, L. 2011, Senator Bradley Maxon Hamlett, was notified by regular mail on December 15, 2011, and subsequently notified by electronic mail on March 2, 2012.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State March 12, 2012



BEFORE THE DEPARTMENT OF JUSTICE  
BOARD OF CRIME CONTROL  
OF THE STATE OF MONTANA

In the matter of the repeal of ARM )  
23.14.204, 23.14.205, and 23.14.206, )  
and the amendment of ARM )  
23.14.101, 23.14.201, 23.14.203, )  
23.14.302, 23.14.303, 23.14.304, )  
23.14.305, 23.14.601, 23.14.603, )  
23.14.604, 23.14.605, 23.14.606, and )  
23.14.1008, concerning the duties )  
and functions of the Board of Crime )  
Control )

TO: All Concerned Persons

1. On February 9, 2012, the Department of Justice published MAR Notice No. 23-14-224, pertaining to the proposed repeal and amendment of the above-stated rules at page 275 of the 2012 Montana Administrative Register, Issue Number 3.

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

3. No comments or testimony were received.

By: /s/ Steve Bullock  
STEVE BULLOCK  
Attorney General  
Department of Justice

/s/ J. Stuart Segrest  
J. STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State on March 12, 2012.

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.121.301 definitions, )  
24.121.403 general requirements, )  
24.121.601, 24.121.603, 24.121.605, )  
24.121.607, and 24.121.611 )  
licensing, 24.121.803, 24.121.805, )  
and 24.121.807 school requirements, )  
24.121.1103 and 24.121.1105 )  
teacher-training, 24.121.1517 salon )  
preparation storage and handling, )  
24.121.2101 continuing education, )  
and 24.121.2301 unprofessional )  
conduct )

TO: All Concerned Persons

1. On December 8, 2011, the Board of Barbers and Cosmetologists (board) published MAR notice no. 24-121-10 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2591 of the 2011 Montana Administrative Register, issue no. 23.

2. On December 29, 2011, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments were received by the January 6, 2012 comment deadline.

3. The board has amended ARM 24.121.301, 24.121.403, 24.121.601, 24.121.603, 24.121.605, 24.121.607, 24.121.611, 24.121.803, 24.121.805, 24.121.807, 24.121.1103, 24.121.1105, 24.121.1517, 24.121.2101, and 24.121.2301 exactly as proposed.

BOARD OF BARBERS AND  
COSMETOLOGISTS  
WENDELL PETERSEN, CHAIRPERSON

/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 March 12, 2012

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.88.901 and 37.88.908 )  
pertaining to the mental health )  
services for adults program of )  
assertive community treatment )  
(PACT) )

TO: All Concerned Persons

1. On October 27, 2011, the Department of Public Health and Human Services published MAR Notice No. 37-564 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2234 of the 2011 Montana Administrative Register, Issue Number 20.

2. The department has amended ARM 37.88.901 as proposed.

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

37.88.908 MENTAL HEALTH CENTER SERVICES FOR ADULTS,  
PROGRAM OF ASSERTIVE COMMUNITY TREATMENT (PACT) (1) and (2)  
remain as proposed.

(3) Assertive community treatment teams must be approved by the Addictive and Mental Disorders Division and comply with the Montana Program of Assertive Community Treatment (PACT) Standards. The department adopts and incorporates by reference the Montana PACT Standards (2011) which set forth the standards of treatment for adults with a severe disabling mental illness (SDMI). A copy of the standards may be obtained from the Addictive and Mental Disorders Division, P.O. Box 202905, Helena, MT 59620-2905 or the following web site:  
<http://www.dphhs.mt.gov/amdd/services/index.shtml>.

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

COMMENT #1: The department should not allow the substitution of APRNs for psychiatrists in the staffing standards. This substitution is a significant compromise to evidence-based PACT national standards. The absence of a psychiatrist would limit the ability to effectively serve the persons for which PACT is meant to target: those individuals with the most complex and severe disabling mental illnesses and other complicated medical histories. Individuals with the most complex needs may

either be denied for services or not successfully served, which may lead some consumers to be re-institutionalization.

RESPONSE #1: The team psychiatrist sees clients, has clinical supervisory responsibilities for clients and staff, regularly participates in daily staff organizational meetings and treatment planning meetings, and directs the operation of medication and medical services. The state of Montana includes these tasks within the scope of practice for APRNs. The department is not aware of individuals who have been denied admission to PACT services because of the limitations of the professional staff on the team.

COMMENT #2: The PACT programs which provide psychiatrists should be reimbursed with an appropriately higher daily rate compared to APRN-staffed PACT programs.

RESPONSE #2: The proposed Montana PACT Standards for 2011 are permissive for this team member to be either a psychiatrist or an APRN. The decision on staffing the PACT team with either professional is made by the provider agency. The daily rate will remain the same.

COMMENT #3: What criteria did the department follow in making revisions to the national PACT standards in order to create the Montana PACT standards? In what fashion are the Montana PACT standards evidence-based? Has a fidelity review been completed in relation to the Montana PACT standards and the evidence-based national standards?

RESPONSE #3: The Montana PACT Standards, modified from the National Program Standards for ACT Teams by Deborah Allness, M.S.S.W. and William Knoedler, M.D., and revised June, 2003 by D. Allness, has been considered a "working document" by the department. The department has been a partner in offering support, clarification, and consultation to the PACT teams. Wherever necessary, and with attention to evidence-based practice (EBP), some modifications have occurred due to the need for clarification of language and the recognition of professional shortages. When modifications have occurred, it has been as a result of consultation with PACT team leaders and discussions with other state agencies. The data collection adhered to a standardized set of criteria wherever possible. Discussion occurs regularly with PACT team leaders regarding outcome data and the need to remain consistent with EBP. A fidelity study will be conducted in 2012.

COMMENT #4: In the absence of close fidelity to the evidence-based national standards, the revised Montana PACT standards could undermine the effectiveness of a proven treatment approach for hundreds of Montana citizens with severe disabling mental illness. Continued negative outcomes, including significant costs to the state of Montana, could result. For this reason, Montana should adopt the National Program Standards for ACT Teams (June 2003 revisions) as written, and any deviation from the standards or waivers of provisions should be clinically

reviewed before allowing the modifications. Otherwise, Montana will be allowing PACT programs in name only, and setting up PACT clients for failure.

RESPONSE #4: The department acknowledges the commenter's concerns. Continued efforts, including training, educational opportunities, team leader meetings, cross training of teams, etc., offer opportunity for feedback and attention to matters affecting the Montana PACT Standards and the overall efficacy of the model. Outcomes from data collection serve as a driving mechanism to measure successes in treatment, rehabilitation, and support.

COMMENT #5: Requiring registered nurses instead of licensed practical nurses (LPN) places an undue hardship on consumers. Many consumers have worked with the commenter's two LPNs since the PACT team started. Because of this long term relationship, many consumers trust these LPNs' guidance and are more willing to accept changes based on the support they give.

RESPONSE #5: Registered nurses on the PACT team provide essential medical assessment and services as well as treatment and rehabilitation services. The department has amended the Montana PACT Standards for 2011 to require two full time nurses on the team, at least one of whom must be a registered nurse. The following is the amended text from the PACT standards:

"V. D. (3) - Nurses: 2 FTE nurses are required at least one of whom is a Registered Nurse. Registered nurses will provide medical assessment and services as well as treatment and rehabilitation services."

COMMENT #6: The previous standards required an average of three contacts with a consumer per week instead of mandating at least three per week. The previous system worked well as it has allowed the PACT team the freedom to engage those who isolate more or avoid services. In some cases, forcing too much engagement on consumers may cause them to withdraw more. The ultimate goal of the PACT services is to assist people in living independently in the community. This goal is reached through individualizing treatment to the unique needs of the client.

RESPONSE #6: The department agrees with the commenter that the ultimate goal of PACT services is individualized treatment that will assist people in living independently in the community. However, the department also believes that persons who have the most severe disabling mental illnesses, symptoms, and impairments, and who have not benefited from traditional outpatient programs, are appropriately served in a program that focuses on treatment, rehabilitation, and support. This can best be accomplished with ongoing face-to-face contact occurring at a minimum of three times a week.

COMMENT #7: The requirement to have a vocational specialist with a master's degree places undue hardship on PACT consumers. Since the creation of PACT programs in Montana, many of our consumers have worked with their vocational specialist who does not possess a master's degree. Because of this long term

relationship, many consumers trust his guidance and are more willing to accept changes based on the support he gives. The vocational specialist has years of work experience in the community. This has made our team stronger and our clients have benefitted greatly from his experience and connections to the community.

RESPONSE #7: The department has amended the language in the Montana PACT Standards for 2011 to require a minimum of a bachelor's degree in rehabilitation counseling and/or certification in rehabilitation counseling. The following is the amended text from the standards:

"V. D. (5) Vocational Specialist: One or more individuals with training and experience in supported employment &/or vocational rehabilitation with a minimum of a bachelor's degree in rehabilitation/vocational counseling and/or certification in rehabilitation counseling, shall be designated the role of vocational specialist. The vocational specialist has the responsibility to develop, direct, and provide work-related services, including assessment of the effect of the client's mental illness on employment, and to plan and implement an ongoing employment strategy to enable each consumer to obtain and retain a job."

COMMENT #8: One commenter requested that staff who do not meet minimal requirements as outlined in Montana PACT Standards for 2011 be "grandfathered."

RESPONSE #8: The department has considered the comments related to staffing requirements for PACT teams and has revised the minimum qualifications for nursing and the vocational specialists. The revised standards will go into effect on April 1, 2012, providing adequate time for PACT programs to come into compliance. Individual members of PACT teams who do not meet the revised standards will not be granted an exception.

COMMENT #9: The rule notice states that there would be no fiscal impact. The commenter disagrees because the increase in salaries to the PACT budget will not allow the team to go above and beyond for clients. Some PACT providers traditionally have several outings a year as well as get-togethers, and they provide food and transportation. With the increase in salaries these may be cut completely and certainly reduced. Helping consumers to socialize and learn social skills is a high standard for the PACT teams.

RESPONSE #9: The proposed amendments to administrative rule and the Montana PACT Standards for 2011 provide updated guidance for the delivery of PACT services in Montana. Although the department has an interest in assuring that PACT services meet minimum standards, it does not participate in determining the salaries of individuals working for PACT providers.

COMMENT #10: The proposed standards require that consumers have four different evaluations in their chart: Mental Health Evaluation, Addiction Evaluation, Health Screening/Evaluation and Vocational Evaluation. While the department's

justification for these evaluations is understood, PACT programs are psychiatric programs and they should be focusing on mental health.

RESPONSE #10: The requirement for a comprehensive evaluation is an integral part of the Montana PACT Standards and has not been amended in the 2011 revisions. The department believes that a comprehensive assessment creates the foundation upon which an individualized treatment plan can be developed. PACT is a client-centered, recovery-oriented program that addresses the needs of its clients in all domains of life, including, but not limited to, mental health, physical health, substance use disorders, housing, employment, and social interaction.

COMMENT #11: In ARM 37.88.908(3), the phrase "be approved by the Addictive and Mental Disorders Division, and" should not have been struck out. AMDD does need to approve each program to provide the PACT services.

RESPONSE #11: The language has been reinserted.

5. These rule amendments are effective April 1, 2012.

/s/ Michelle Maltese  
Rule Reviewer

/s/ Anna Whiting Sorrell by Mary E. Dalton  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State March 12, 2012.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.87.1303, 37.87.1307, )  
37.87.1321, and 37.87.1333 )  
pertaining to home and community- )  
based services (waiver) for youth with )  
serious emotional disturbance )

TO: All Concerned Persons

1. On January 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-571 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 167 of the 2012 Montana Administrative Register, Issue Number 2.

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

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

COMMENT #1: A commenter appreciated the changes being made to the Administrative Rules of Montana included in this notice, particularly the changes to the Family Support Specialist requirement which will allow families increased access to the service.

RESPONSE #1: The department acknowledges the commenter's appreciation for the proposed amendment.

COMMENT #2: A commenter acknowledged the amendment is a good effort as long as there are no negative impacts on the youth and families served in the home and community-based services program for youth with a serious emotional disturbance.

RESPONSE #2: The department appreciates the comment. The proposed amendment does not have negative impacts on the youth and families served in the home and community-based services program for youth with a serious emotional disturbance.

COMMENT #3: A commenter noted there is an array of services to ensure that individuals' needs are met and hopes these services provide what families need to maintain a child at home.



RESPONSE #3: The department acknowledges there is an array of services designed to serve youth in the home and community-based setting, thus maintaining the youth in the home setting.

There were suggestions from commenters pertaining to matters not applicable to the rules being amended in this notice, therefore, they are not being responded to in this notice. The department responded directly to these commenters.

/s/ John Koch  
Rule Reviewer

/s/ Hank Hudson for  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State March 12, 2012.

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

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 37.86.2803, 37.86.2907, )  
37.86.2918, and 37.86.2925 )  
pertaining to Medicaid inpatient )  
hospital services )

TO: All Concerned Persons

1. On January 26, 2012, the Department of Public Health and Human Services published MAR Notice No. 37-572 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 173 of the 2012 Montana Administrative Register, Issue Number 2.

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

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

COMMENT #1: One commenter stated an interest in working with the department to examine the reasons for falling APR/DRG weights.

RESPONSE #1: On average, DRG weights have fallen which is why the department increased the hospital-based rates in order to compensate for these fallen DRG weights. The department recognizes and thanks the commenter for their interest in collaboratively researching decreasing APR/DRG weights.

COMMENT #2: Three comments were received regarding inpatient psychiatric care urging the department to consider a policy adjuster to ensure Medicaid payments for psychiatric services continues at a sustainable rate, and to better align Medicaid payments with existing service intensity.

An additional comment suggested the department may need to increase the children's mental health modifier to establish reasonable payment amounts.

RESPONSE #2: At this time, the department is not considering the implementation of a policy adjuster for adult mental health services, or an increase in the children's mental health policy adjuster which is presently set at 1.51 for children less than eighteen years of age. The department will continue to research existing service intensity, and continue to monitor the adjusted weights for mental health DRGs and the subsequent payments to providers.

COMMENT #3: Two comments were received regarding neonatal intensive care DRGs. Mentioned was the need for establishing a policy adjuster to offset a reduction in acute care reimbursement stating that the current fee schedule creates the perception of inequity by placing a disproportionate burden over acute care services.

One commenter expressed concern over the significant change in grouper logic particularly regarding low birth weight cases grouped to DRG 589.4.

An additional comment mentioned that the outlier threshold for DRG 589.4 was significantly over stated.

RESPONSE #3: At this time, the department is not considering increasing the current policy adjuster for neonate services. Currently, the department has a policy adjuster for neonate services which is set at 1.43. The department will continue to monitor the adjusted weights for neonate services and their corresponding DRGs and the subsequent payments to providers.

DRG 589.4 is for extremely premature babies who do not receive any major procedures and have high mortality rates. The severity of illness logic is unique to this DRG since no newborn intervention procedures are performed. These clients have an average length of stay of just one day, which is why there is a very low relative weight assigned to this DRG. Because of the reasons previously stated, these clients use less hospital resources which also contributes to the very low relative weight assigned to this DRG. At this time, the department is not considering changing the methodology for establishing cost outlier thresholds. Regarding DRG 589.4, the department does not anticipate a claim hitting an outlier payment for this DRG.

COMMENT #4: One comment was received regarding obstetrics and establishing a policy adjuster to offset the reduction in reimbursement for normal newborn and obstetric services.

RESPONSE #4: At this time, the department is not considering the implementation of a policy adjuster for obstetric services. Currently, the department has a policy adjuster for normal newborn services which is set at 1.36. The department will continue to monitor the adjusted weights for normal newborn and obstetric services and their corresponding DRGs and the subsequent payments to providers.

COMMENT #5: One comment was received recommending that the department continue to analyze claims data and consider additional modifications to assure that hospitals or service lines are not unfairly reduced from current spending levels.

An additional comment suggested that the department monitor the impact of the new fee schedule on a quarterly basis.

RESPONSE #5: The department agrees with the commenter and will continue to analyze data on an ongoing basis. Each year, the department must stay within the appropriation amount allocated by the Legislature which determines Medicaid spending levels. In-state hospitals will be able to recoup most unpaid costs through the distribution of the hospital utilization fee.

COMMENT #6: One comment indicated support of the department's proposed rule to recover DSH overpayments.

RESPONSE #6: The department thanks the commenter for their support of the rule.

4. These rule amendments are effective April 1, 2012.

/s/ John Koch  
Rule Reviewer

/s/ Hank Hudson for  
Anna Whiting Sorrell, Director  
Public Health and Human Services

Certified to the Secretary of State March 12, 2012.

BEFORE THE DEPARTMENT OF REVENUE  
OF THE STATE OF MONTANA

In the matter of the adoption of New )  
Rule I (42.20.118), and the )  
amendment of ARM 42.20.102 )  
relating to property tax exemptions )

NOTICE OF ADOPTION AND  
AMENDMENT

TO: All Concerned Persons

1. On January 12, 2012, the department published MAR Notice Number 42-2-873, regarding the proposed adoption and amendment of the above-stated rules at page 41 of the 2012 Montana Administrative Register, Issue Number 1.

2. A public hearing was held on February 6, 2012, to consider the proposed adoption and amendment. Mr. Terry Pitts, Confederated Salish and Kootenai Tribes (CSKT) Tribal Council, Ms. Teresa Wall McDonald, CSKT Tribal Representative, Mr. Randal McDonald, CSKT Attorney, and Mr. Joel Clairmont, CSKT Member; all appeared and testified at the hearing. In addition, the department received written comments from Joe Durglo, CSKT Tribal Chairman, and Senator Shannon J. Augare, the sponsor of SB 412, L. 2011. Oral testimony and written comments received are summarized as follows along with the responses of the department:

COMMENT NO. 1: Mr. Terry Pitts testified that the tribal council is in favor of the passage of the rules. He thanked the department and sponsors for their efforts. Mr. Pitts further stated that the proposed rules benefit the tribes and allow them to be more prudent with their resources and become more self-sufficient.

RESPONSE NO. 1: The department appreciates Councilman Pitts' comments. The department welcomes opportunities to work cooperatively with tribal governments.

COMMENT NO. 2: Ms. Teresa McDonald submitted written comments from Tribal Chairman Joe Durglo, and read them aloud for the record. In his written comments, Chairman Durglo stated that the tribe is in favor of the passage of the rules and appreciates the efforts of department leadership, staff, and the bill sponsors. He further stated that the proposed rules simplify the property tax rules and administrative burden for both the department and tribal governments when putting acquired property into trust status.

Chairman Durglo stated that, as a self-governance tribe, their fee to trust process follows the federal handbook standard with some unique elements, in that they have a local working relationship with the local United States Department of Interior (DOI), Bureau of Indian Affairs (BIA) decision maker, the Flathead Agency Superintendent, on each parcel going from fee to trust.

Chairman Durglo further commented that the CSKT have adapted an application for approval of the fee to trust process and the tribe is currently positioning itself to meet the department's requirements for obtaining a temporary

fee to trust property tax exemption. Chairman Durglo stated that while CSKT generally supports the rule, the tribe requests that New Rule I (ARM 42.20.118) be modified in (1)(a) to read "the tribe's initial written request or application is deemed complete...."

RESPONSE NO. 2: The department agrees with Chairman Durglo's requested modification. The federal fee to trust process specifically recognizes a tribal government's written request when seeking fee to trust status. The department presented amendments at the hearing to modify the proposed rule accordingly.

COMMENT NO. 3: Senator Shannon Augare, in his written comments, also asked the department to insert "written request" into the proposed language in New Rule I, as a matter of consistency with the language in Senate Bill 412. Senator Augare further commented that the term "written request" is important, as the U.S. trust acquisition regulations do not require an application and recognize written requests.

Senator Augare's primary concern was the department's determination of when an application or written request is considered "complete." He provided excerpts from the fee to trust handbook where the BIA is mandated to acknowledge receipt of the request package to the tribe within ten days to commence the process, and to communicate with the tribe within 30 days regarding missing or incomplete information. He further stated that the BIA does not provide a statement that the request is complete – only an acknowledgement of receipt.

Senator Augare also stated that it would appear logical that when the tribe submits the initial request with the identified items that the request would be completed, and proposed that the department agree that the ten-day acknowledgement would suffice as a complete initial request.

Senator Augare further stated that if the state decides "complete" to mean when all 16 steps are completed and a final decision is pending, the tax exemption would be meaningless because completion of the steps is time-consuming, and that he has concern that the BIA would be leery to provide the certification of completeness prior to completion of the steps.

RESPONSE NO. 3: The department agrees with Senator Augare regarding the addition of "written request" in the proposed rule and, as stated in Response Number 2, the department presented such amendments at the hearing to modify the proposed rule.

In response to Senator Augare's concern regarding the department's determination of when the tribe's initial written request or application is deemed complete, the department agrees that the proposed rule would be meaningless if "complete" meant when all 16 steps are completed and a final decision is pending. The department also included amendments to the proposed rule at the hearing in regards to this issue. The amendments require the tribe to provide the department with a copy of the United States DOI, BIA correspondence that the initial written request or application has been received prior to January 1, or that it is complete as of a specific date.

The amendments also address the instance when the tribe's written request

or application is incomplete. In the case of incompleteness, the proposed rule requires the tribe to certify that: 1) it has received notification from the United States DOI, BIA, that the tribes' initial written request or application was incomplete; 2) the tribe has satisfied all requirements regarding incompleteness that were set out in the United States DOI, BIA, letter; and 3) the tribe satisfied the requirements as of the date the tribe made application to the department.

COMMENT NO. 4: Mr. Randal McDonald submitted additional written comments from Chairman Durglo and highlighted them through oral testimony.

Mr. McDonald testified that while the tribe feels the proposed rules do a good job of reflecting the intent of the legislation, they are concerned about the essential government services language, in the bill itself, being broader than the language in the proposed rule, and requested that the essential government services language be revisited.

In his written comments, Chairman Durglo, stated that he appreciates the efforts of the department leadership and staff and bill sponsors to correct the situation where tribal governments were not eligible for property tax exemptions. Chairman Durglo further stated, however, that the proposed rules do not include the depth and breadth of essential governmental services provided by a tribal government such as police, fire, public transit, and water and sewer services. Chairman Durglo requested that the rule be expanded to include the broader definition of essential governmental services as described in House Bill 618, L. 2011.

RESPONSE NO. 4 The department appreciates Chairman Durglo pointing out that the statute and proposed rule do not seem to coincide. The proposed rule is the department's guideline for its administrative process in the implementation of the statutory language.

All essential government services delineated in statute are eligible for an exemption, even though they are not explicitly stated in the proposed rule. ARM 42.20.102(3) specifies the documentation that the tribe must submit when the property is an "essential government service." Sections (6)(b), (7)(e), (8)(b), (9)(c), and (10)(b) require the tribe's resolution to specifically state how the property in which the tribe is requesting an exemption, qualifies under that specific exemption category. The department agrees, however, with Chairman Durglo that the language in the proposed rule could be more clear. The department is further amending ARM 42.20.102(12), by specifically identifying essential government services in statute as eligible exemptions under the proposed rule.

The proposed rules inform tribal governments, non-tribal governments, and public entities of the required documentation needed to determine properly whether the property identified in the exemption application qualifies. Thus, the department implicitly accepts all property identified by statute as eligible for a property tax exemption.

COMMENT NO. 5: Mr. McDonald further commented that they are concerned with the 15-acre limitation on the parks and recreation exemption, and that their primary concern is with regard to mitigation properties the reservation has acquired with funding from the Bonneville Power Administration (BPA). Mr.

McDonald commented that the way the tribe treats those mitigation properties is similar to the way the state treats them relative to use permits and that the 15-acre limitation would create a burden for some of the larger land tracts they consider to be park land.

Mr. Durglo asked whether the 15-acre limitation on property tax exemptions apply to the BPA mitigation parcels acquired by the State of Montana.

RESPONSE NO. 5: No, the 15-acre limitation does not apply to the state parcels. HB 618, L. 2011, incorporated tribal governments in the law specifically for certain property tax exemptions, but specifically placed the 15-acre limit on park and recreational lands.

The department acknowledges that tribes may have park and recreational lands that exceed the statutory 15-acre limitation. The department lacks legal authority, however, to expand the statutory requirement beyond the 15-acre limit.

COMMENT NO. 6: Mr. McDonald further testified about the language concerning the dedication of religious tracts and the materials that must be provided by a tribe seeking an exemption for a cemetery and for religious purposes.

He commented that while many cemeteries transferred to the tribe are clearly identifiable, the council does express concern about the sites that are considered sacred. In the interest of not exposing those lands to vandalism and desecration, Mr. McDonald stated they would like the regulations to reflect the need for confidentiality, and see a method put in place to protect the confidentiality of the reason or justification provided to the department on those tracts.

RESPONSE NO. 6: While the department recognizes the tribe's need to maintain heightened confidentiality of lands designated for cemetery or religious purposes, there is no provision within the current property tax system to effectively shield property tax information (e.g., location) that supports granting such an application.

COMMENT NO. 7: Mr. Joel Clairmont testified that, as a CSKT member, he supports the leadership of the tribe, their interest in and review of the proposed rules, and their actions.

RESPONSE NO. 7: The department appreciates Mr. Clairmont's comments and looks forward to opportunities to collaborate with the tribes.

3. As a result of the comments received, the department adopts New Rule I (ARM 42.20.118) with the following changes:

NEW RULE I (42.20.118) TRIBAL GOVERNMENT'S APPLICATION FOR A TEMPORARY PROPERTY TAX EXEMPTION (1) A federally recognized tribe in Montana is eligible for a temporary property tax exemption of tribal fee land on January 1, under the following conditions:

(a) the tribe submits to the department the following:

(i) ~~the~~ a United States Department of Interior, Bureau of Indian Affairs,



~~submits a written response to the tribe, or certification to the director of the department, that the tribe's initial letter dated prior to January 1 acknowledging receipt of the tribe's written request or application for the acquisition of trust title to the tribal fee land; a tribal certification regarding whether the tribe subsequently received notice from the United States Department of Interior, Bureau of Indian Affairs that the tribe's written request or application was incomplete; and a tribal certification regarding whether the tribe has satisfied the requirements regarding incompleteness that were set out in the United States Department of Interior, Bureau of Indian Affairs letter as of the date of the application to the department; was complete as of a specific date; and or~~

~~(ii) a United States Department of Interior, Bureau of Indian Affairs written certification to the director of the department that the tribe's initial written request or application for the acquisition of trust title to the tribal fee land was submitted prior to January 1 and the initial written request or application was complete as of the dates of the exemption application to the department; and~~

~~(b) the tribe makes timely application to the local department office in the year in which the exemption is sought.~~

~~(2) remains as proposed.~~

~~(3) The following documents must accompany the tribe's application to the department:~~

~~(a) a United States Department of the Interior, Bureau of Indian Affairs' letter stating that acknowledging receipt of the tribe's initial written request or application for acquisition of trust title to the tribal fee land, or a United States Department of Interior, Bureau of Indian Affairs is deemed complete, or certification to the director of the department, that the tribe's written request or application for acquisition of trust title to the tribal fee land was complete as of a specific date; and~~

~~(b) a tribal resolution identifying the fee land, by legal description, for which the tribe has applied for federal trust title.~~

~~(4) The tribe must also certify in the application to the department whether the United States Department of Interior, Bureau of Indian Affairs has notified the tribe that its written request or application for acquisition of trust title to the tribal fee land was incomplete, and whether the tribe has satisfied the requirements regarding incompleteness that were set out in the United States Department of Interior, Bureau of Indian Affairs letter, as of the date of the application to the department.~~

~~(4)(5) The temporary exemption will:~~

~~(a) apply only during the timeframe in which the tribe's written request or application is pending with the United States Department of Interior, Bureau of Indian Affairs;~~

~~(b) not exceed five years; and~~

~~(c) be removed on December 31 of the year in which the United States Department of Interior, Bureau of Indian Affairs, denies the tribe's written request or application for the acquisition of trust title. The department will:~~

~~(i) assess taxes on January 1 of the year after the tribe's written request or application is denied; and~~

~~(ii) no longer make available all property associated with a denied written request or application.~~

~~(5)(6) The tribe shall annually certify to the director of the department, by~~

March 1, that their ~~trust~~ written request or application for the acquisition of trust title is still under consideration by the United States Department of Interior, Bureau of Indian Affairs.

(6) and (7) remain as proposed, but are renumbered (7) and (8).

~~(8)~~(9) When a tribe has administrative or contractual responsibilities, related to their own federal trust request or application process, the Secretary of Interior, or the person delegated authority by the Secretary of Interior, must certify to the director of the department that the property has been properly accepted into trust by, and is now subject to, the management of the United States, and the specific date that each property was taken into trust. Upon receipt of the certification, the department will direct the local office to contact the county treasurer and remove the parcel(s) from the tax rolls.

AUTH: 15-1-201, 15-6-230, MCA

IMP: 15-6-230, MCA

4. Based on the comments received, the department further amends ARM 42.20.102 as follows, stricken matter interlined, new matter underlined:

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) The property owner of record, the property owner's agent, or a federally recognized tribe, must file an application for a property tax exemption on a form available from the local department office before March 1, except as provided in ~~[NEW RULE 1]~~ ARM 42.20.118 for 2012, of the year for which the exemption is sought or within 30 days after receiving an assessment notice, whichever is later. Applications postmarked after March 1 or more than 30 days of receiving the assessment notice, whichever is later, will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) the taxpayer receives notice by way of an AB-34 (Removal of Property Tax Exemption) that the property will be placed on the tax roll. The taxpayer shall have 30 days after receipt of the notice to submit an application for exemption; or

(b) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness.

(2) through (11) remain as proposed.

(12) If the property is owned by a governmental entity (such as city, county, or state), the federal government (unless Congress has passed legislation allowing the state to tax property owned by a federal entity), tribal government, nonprofit irrigation districts organized under Montana law, municipal corporations, public libraries, or rural fire districts and other entities providing fire protection under Title 7, chapter 33, MCA, the department will employ the following exemption criteria for real property when considering exemption claims based upon 15-6-201, MCA:

(a) the properties will be tax-exempt as of the purchase date that is reflected on the deed or security agreement;

(b) if a property is tax-exempt as of January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable upon the transfer of the property. The tax is prorated according to 15-16-203, MCA; ~~and~~

(c) if a property is tax-exempt, as stated in (12)(b), and is sold as tax-deed property to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable on January 1 following the execution of such contract or deed as provided in 7-8-2307, MCA; and

(d) if a tribal government is requesting an exemption of an essential government service, as provided by statute, that service must be identified in the application.

(13) remains as proposed.

AUTH: 15-1-201, 15-6-230, MCA

IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, 15-6-211, 15-6-216, 15-6-221, 15-6-230, 15-7-102, MCA

5. An electronic copy of this notice is available on the department's web site at [www.revenue.mt.gov](http://www.revenue.mt.gov). Select the "Legal Resources" link in the left hand column, and click on the "Rules" link within to view the options under the "Notice of Proposed Rulemaking" heading. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. While the department also strives to keep its web site accessible at all times, in some instances it may be temporarily unavailable due to system maintenance or technical problems.

/s/ Cleo Anderson  
CLEO ANDERSON  
Rule Reviewer

/s/ Dan R. Bucks  
DAN R. BUCKS  
Director of Revenue

Certified to Secretary of State March 12, 2012

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 44.10.401 pertaining to )  
statements and filing of reports )

TO: All Concerned Persons

1. On September 22, 2011, the Commissioner of Political Practices published MAR Notice No. 44-2-178 pertaining to the proposed amendment of the above-stated rule at page 2016 of the 2011 Montana Administrative Register, Issue Number 18.

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

3. No comments or testimony were received.

/s/ Jim Scheier  
Jim Scheier  
Rule Reviewer

/s/ James W. Murry  
James W. Murry  
Commissioner of Political Practices

Certified to the Secretary of State March 6, 2012.

## **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, 2011. This table includes those rules adopted during the period October 1, 2011, through December 31, 2011, 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, 2011, 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 2011/2012 Montana Administrative Register.

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

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## BOARD APPOINTEES AND VACANCIES

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

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

In this issue, appointments effective in February 2012 appear. Vacancies scheduled to appear from April 1, 2012, through June 30, 2012, 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 March 1, 2012.

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 FEBRUARY 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Occupational Therapy Practice</b> (Labor and Industry)			
Ms. Sanna Beerman Black Eagle Qualifications (if required): occupational therapist	Governor	Gilbertson	2/24/2012 12/31/2015
<b>Board of Regents</b> (Commissioner of Higher Education)			
Mr. Jeffrey K. Krauss Bozeman Qualifications (if required): resident of District 1 (Republican)	Governor	Christian	2/22/2012 2/1/2015
Mr. Pat Williams Missoula Qualifications (if required): resident of District 1 (Democrat)	Governor	Barrett	2/22/2012 2/1/2019
<b>Board of Veterinary Medicine</b> (Labor and Industry)			
Dr. Kathy McGann Missoula Qualifications (if required): veterinarian	Governor	Sager	2/22/2012 7/31/2016
<b>Burial Preservation Board</b> (Administration)			
Mr. Hubert Abrams Wibaux Qualifications (if required): representative of the Blackfeet Tribe	Governor	reappointed	2/8/2012 8/22/2013
Mr. Henry Anderson Helena Qualifications (if required): representative of the Little Shell Tribe	Governor	Randolph	2/8/2012 8/22/2012

**BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Burial Preservation Board</b> (Administration) cont.			
Mr. Robert P. Four Star Poplar	Governor	reappointed	2/8/2012 8/22/2013
Qualifications (if required): representative of the Fort Peck Tribes			
Ms. Skye Gilham Browning	Governor	reappointed	2/8/2012 8/22/2013
Qualifications (if required): physical anthropologist			
Mr. Reuben Mathias Pablo	Governor	reappointed	2/8/2012 8/22/2013
Qualifications (if required): representative of the Salish-Kootenai Tribes (Flathead)			
Mr. John Murray Browning	Governor	reappointed	2/8/2012 8/22/2013
Qualifications (if required): representative of the Blackfeet Tribe			
Mr. Steve Platt Helena	Governor	reappointed	2/8/2012 8/22/2013
Qualifications (if required): representative of the State Historic Preservation Office			
Ms. Marilyn Silva Miles City	Governor	reappointed	2/8/2012 8/22/2013
Qualifications (if required): public representative			

## BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Commissioner of Political Practices</b> (Secretary of State)			
Mr. James W. Murry Clancy	Governor	Gallik	2/7/2012 1/1/2017
Qualifications (if required): citizen of Montana and a registered voter			
<b>Montana Heritage Preservation and Development Commission</b> (Commerce)			
Ms. Cynthia Andrus Bozeman	Governor	Tuss	2/6/2012 5/23/2014
Qualifications (if required): representative of the Tourism Advisory Council			
<b>Small Business Health Insurance Pool Board</b> (Auditor's Office)			
Mr. John Thomas Helena	Governor	reappointed	2/8/2012 1/1/2015
Qualifications (if required): management-level individual with knowledge of state employee health benefits plans			
<b>State Emergency Response Commission</b> (Military Affairs)			
Ms. Delila Bruno Helena	Governor	Simmons	2/6/2012 10/1/2015
Qualifications (if required): representative of the Emergency Medical Services and Trauma Services Section/DPHHS			
Major Thomas Butler Helena	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the Department of Justice			
Mr. Dan Carney Browning	Governor	Mcllveen	2/6/2012 10/1/2015
Qualifications (if required): representative of the league of cities and towns			



**BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>			
Mr. Bruce M. Coccoli	Governor	Emerson	2/6/2012
No city listed			10/1/2015
Qualifications (if required): representative of the National Guard			
Mr. Jim DeTienne	Governor	reappointed	2/6/2012
Helena			10/1/2015
Qualifications (if required): representative of the Emergency Medical Services and Trauma Services Section/DPHHS			
Mr. Roger Ebner	Governor	O'Connell	2/6/2012
Butte			10/1/2015
Qualifications (if required): representative of an emergency management association			
Mr. Ron Jendro	Governor	reappointed	2/6/2012
Helena			10/1/2015
Qualifications (if required): representative of the Department of Fish, Wildlife and Parks			
Mr. Thomas Kuntz	Governor	reappointed	2/6/2012
Red Lodge			10/1/2015
Qualifications (if required): representative of a fire service association			
Ms. Judith LaPan	Governor	Nelson	2/6/2012
Sidney			10/1/2015
Qualifications (if required): representative of a public health organization			

## BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>			
Mr. Pete Lawrenson Missoula	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of a railroad company			
Ms. Bonnie Lovelace Helena	Governor	Ellerhoff	2/6/2012 10/1/2015
Qualifications (if required): representative of the Department of Environmental Quality			
Mr. Joe Marcotte Billings	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of Montana hospitals			
Mr. Andre Marcure Missoula	Governor	Mazurek	2/6/2012 10/1/2015
Qualifications (if required): representative of the insurance industry			
Mr. David W. Mason Helena	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the fire services training school			
Mr. Michael McGinley Dillon	Governor	Brenneman	2/6/2012 10/1/2015
Qualifications (if required): representative of the association of counties			
Mr. Michael Mercer Great Falls	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the National Weather Service			

## BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>			
Mr. Dale Nelson Ronan	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of a tribal emergency response commission			
Mr. William T. Rhoads Butte	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of a utility company			
Ms. Cheryl Richman Helena	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the Department of Transportation			
Mr. Peter Ridgeway Missoula	Governor	Lewis	2/6/2012 10/1/2015
Qualifications (if required): representative of the transportation industry			
Mr. Scott Sanders Belgrade	Governor	Buckles	2/6/2012 10/1/2015
Qualifications (if required): representative of an emergency medical services association			
Mr. Royce A. Shipley Great Falls	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the U.S. Air Force			
Ms. Michelle Slyder Billings	Governor	Taylor	2/6/2012 10/1/2015
Qualifications (if required): representative of the petroleum industry			

**BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Emergency Response Commission (Military Affairs) cont.</b>			
Mr. Bruce Suenram Helena	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the Department of Natural Resources and Conservation			
Commissioner Ed Tinsley Fort Harrison	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the Disaster and Emergency Services			
Chief John Turner Fort Benton	Governor	Brophy	2/6/2012 10/1/2015
Qualifications (if required): representative of a law enforcement association			
Mr. Michael Vogel Bozeman	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the university system			
Ms. Sheena Wilson Helena	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the governor's office			
Mr. Ron Zellar Helena	Governor	reappointed	2/6/2012 10/1/2015
Qualifications (if required): representative of the Department of Agriculture			

## BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Statewide Independent Living Council</b> (Public Health and Human Services)			
Ms. Monica Garrahan Havre	Governor	Pool	2/21/2012 12/1/2014
Qualifications (if required): public representative			
Mr. Dick Trerise Helena	Governor	Harris	2/21/2012 12/1/2013
Qualifications (if required): agency representative			
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services)			
Ms. Shaunda Albert Pablo	Governor	reappointed	2/13/2012 10/1/2014
Qualifications (if required): Section 121 representative			
Ms. Prairie Bighorn Billings	Governor	Griffin	2/13/2012 10/1/2014
Qualifications (if required): business representative			
Ms. Amy Capolupo Missoula	Governor	LaFountain	2/13/2012 10/1/2014
Qualifications (if required): representative of the disabilities community			
Mr. Michael DesRosier Browning	Governor	Keneally	2/13/2012 10/1/2014
Qualifications (if required): representative of the State Workforce Investment Board			

## BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Vocational Rehabilitation Council</b> (Public Health and Human Services) cont.			
Ms. Annaliese Gibbs Billings	Governor	Faight	2/13/2012 10/1/2014
Qualifications (if required): vocational rehabilitation counselor			
Mr. Rick Heitz Kalispell	Governor	Dawson	2/13/2012 10/1/2014
Qualifications (if required): representative of the disabilities community			
Ms. Rosalie Hollimon Great Falls	Governor	Mattlin	2/13/2012 10/1/2012
Qualifications (if required): representative of the disabilities community			
Ms. Robin Johnson Great Falls	Governor	Williamson	2/13/2012 10/1/2014
Qualifications (if required): representative of the disabilities community			
Mr. Dale Mahugh Butte	Governor	Falcon	2/13/2012 10/1/2012
Qualifications (if required): business representative			
Mr. Jim Marks Helena	Governor	not listed	2/13/2012 10/1/2014
Qualifications (if required): ex-officio representative of the state Vocational Rehabilitation Division			
Ms. Lois McElravy Missoula	Governor	reappointed	2/13/2012 10/1/2014
Qualifications (if required): representative of the disabilities community			

**BOARD AND COUNCIL APPOINTEES FROM FEBRUARY 2012**

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Vocational Rehabilitation Council (Public Health and Human Services) cont.</b>			
Mr. John Senn	Governor	Colombe	2/13/2012
Billings			10/1/2014
Qualifications (if required): representative of the disabilities community			
Ms. Marla Swanby	Governor	Sandve	2/13/2012
Helena			10/1/2013
Qualifications (if required): state education agency representative			
Mr. Michael Woods	Governor	Burkes	2/13/2012
Billings			10/1/2014
Qualifications (if required): representative of the disabilities community			

**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Board of Hail Insurance</b> (Agriculture)                      Ms. Trudy Laas Skari, Chester                      Qualifications (if required): public member</p>	Governor	4/18/2012
<p><b>Board of Massage Therapists</b> (Labor and Industry)                      Mr. Stacy Baird, East Helena                      Qualifications (if required): massage therapist</p>	Governor	5/6/2012
<p><b>Board of Nursing Home Administrators</b> (Labor and Industry)                      Ms. Carla Neiman, Plains                      Qualifications (if required): representative of an institution caring for the aged</p>	Governor	5/28/2012
<p>Mr. Joshua Brown, Columbia Falls                      Qualifications (if required): nursing home administrator</p>	Governor	5/28/2012
<p><b>Board of Optometry</b> (Labor and Industry)                      Mr. Randall Hoch, Lewistown                      Qualifications (if required): registered optometrist</p>	Governor	4/3/2012
<p><b>Board of Plumbers</b> (Labor and Industry)                      Mr. Jeffrey Gruizenga, Billings                      Qualifications (if required): professional engineer (mechanical)</p>	Governor	5/4/2012
<p><b>Board of Real Estate Appraisers</b> (Labor and Industry)                      Ms. Kathleen Susan Gallaher, Bozeman                      Qualifications (if required): public representative</p>	Governor	5/1/2012



**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Real Estate Appraisers</b> (Labor and Industry) cont. Mr. Darwin Ernst, Hamilton Qualifications (if required): real estate appraiser	Governor	5/1/2012
<b>Board of Realty Regulation</b> (Labor and Industry) Mr. Pat Goodover, Great Falls Qualifications (if required): real estate salesperson	Governor	5/9/2012
<b>Board of Regents</b> (High Education) Mr. Joseph Thiel, Bozeman Qualifications (if required): full-time student in the Montana State	Governor	6/30/2012
<b>Clinical Laboratory Science Practitioners</b> (Labor and Industry) Ms. Wendy Palmer, Raynesford Qualifications (if required): clinical laboratory science practitioner	Governor	4/16/2012
<b>Commission on Practice of the Supreme Court</b> (Supreme Court) Ms. Jean Faure, Great Falls Qualifications (if required): none specified	elected	6/9/2012
<b>District Court Council</b> (Supreme Court) Ms. Lori Maloney, Butte Qualifications (if required): none specified	District Court	6/30/2012
Judge Gregory R. Todd, Billings Qualifications (if required): none specified	District Court	6/30/2012

**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Family Support Services Advisory Council</b> (Public Health and Human Services)		
Ms. Sylvia Danforth, Miles City Qualifications (if required): provider representative	Governor	4/9/2012
Mr. Theodore Maloney, Helena Qualifications (if required): personnel preparation	Governor	4/9/2012
Ms. Sandi Marisdotter, Helena Qualifications (if required): provider representative	Governor	4/9/2012
Ms. Cristin Volinkaty, Missoula Qualifications (if required): provider representative	Governor	4/9/2012
Ms. Mary Jane Standaert, Helena Qualifications (if required): Head Start/Early Head Start representative	Governor	4/9/2012
Ms. Lucy Hart-Paulson, Missoula Qualifications (if required): language therapist	Governor	4/9/2012
Ms. Sandy McGennis, Great Falls Qualifications (if required): representative of the School for the Deaf and Blind	Governor	4/9/2012
Ms. Novelene Martin, Miles City Qualifications (if required): parent representative	Governor	4/9/2012
Mr. Ronald Herman, Helena Qualifications (if required): agency representative	Governor	4/9/2012

**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Family Support Services Advisory Council</b> (Public Health and Human Services) cont. Ms. Diana Colsgrove, Eureka Qualifications (if required): parent representative	Governor	4/9/2012
Ms. Laurie Frank, Simms Qualifications (if required): parent representative	Governor	4/9/2012
Ms. Priscilla Halcro, Great Falls Qualifications (if required): family support specialist	Governor	4/9/2012
Ms. Paula Sherwood, Missoula Qualifications (if required): agency representative	Governor	4/9/2012
Mr. Joseph Miller, Big Sky Qualifications (if required): parent representative	Governor	4/9/2012
Mr. Verne Beffert, Livingston Qualifications (if required): special education representative	Governor	4/9/2012
Ms. Denise Brunett, Helena Qualifications (if required): agency representative	Governor	4/9/2012
Ms. Dawn Piazzzi, Helena Qualifications (if required): agency representative	Governor	4/9/2012
Ms. Beverly Hertweck, Helena Qualifications (if required): agency representative	Governor	4/9/2012

**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Family Support Services Advisory Council</b> (Public Health and Human Services) cont.                      Ms. Danni McCarthy, Helena                      Qualifications (if required): agency representative</p>	Governor	4/9/2012
<p><b>Horse Racing Business Advisory Council</b> (Governor)                      Director Dore Schwinden, Helena                      Qualifications (if required): representative of the Department of Commerce</p>	Governor	6/30/2012
<p>Mr. Christian Mackay, Helena                      Qualifications (if required): representative of the Department of Livestock</p>	Governor	6/30/2012
<p>Sen. Cliff Larsen, Missoula                      Qualifications (if required): public representative</p>	Governor	6/30/2012
<p><b>Interagency Coordinating Council for State Prevention Programs</b> (Public Health and Human Services)                      Ms. Diane Cashell, Bozeman                      Qualifications (if required): prevention programs/services experience</p>	Governor	6/16/2012
<p>Ms. Patty Stevens, Ronan                      Qualifications (if required): prevention programs/services experience</p>	Governor	6/16/2012
<p><b>Library Commission</b> (Higher Education)                      Mr. Donald W. Allen, Billings                      Qualifications (if required): public representative</p>	Governor	5/22/2012
<p>Ms. Anita Scheetz, Sidney                      Qualifications (if required): public representative</p>	Governor	5/22/2012

**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Montana Cherry Commodity Advisory Committee</b> (Agriculture)            Mr. Jan Tusick, Ronan            Qualifications (if required): none specified</p>	Director	5/3/2012
<p><b>Montana Election and Technology Advisory Council</b> (Secretary of State)            Ms. Bonnie Ramey, Boulder            Qualifications (if required): Jefferson County Clerk &amp; Recorder</p>	Secretary of State	4/26/2012
<p>Ms. Vickie Zeier, Missoula            Qualifications (if required): Missoula County Clerk and Recorder</p>	Secretary of State	4/26/2012
<p>Ms. Janice Hoppes, Conrad            Qualifications (if required): Pondera County Clerk and Recorder</p>	Secretary of State	4/26/2012
<p>Ms. Sandra Boardman, Chinook            Qualifications (if required): Blaine County Clerk and Recorder</p>	Secretary of State	4/26/2012
<p>Ms. Kathie Newgard, Polson            Qualifications (if required): Lake County Election Administrator</p>	Secretary of State	4/26/2012
<p>Ms. Jeri Custer, Forsyth            Qualifications (if required): Rosebud County Clerk and Recorder</p>	Secretary of State	4/26/2012
<p>Ms. Charlotte Mills, Bozeman            Qualifications (if required): Gallatin County Clerk and Recorder</p>	Secretary of State	4/26/2012
<p>Mr. Bret Rutherford, Billings            Qualifications (if required): Yellowstone County Election Administrator</p>	Secretary of State	4/26/2012

**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Health Coalition</b> (Public Health and Human Services) Ms. Mary Dalton, Helena Qualifications (if required): none specified	Director	5/31/2012
Ms. Kristianne Wilson, Billings Qualifications (if required): none specified	Director	5/31/2012
Rep. Edith J. Clark, Sweet Grass Qualifications (if required): none specified	Director	5/31/2012
Dr. Gary Mihelish, Helena Qualifications (if required): none specified	Director	5/31/2012
Ms. Jane Smilie, Helena Qualifications (if required): none specified	Director	5/31/2012
Mr. Dave Pierce, Billings Qualifications (if required): none specified	Director	5/31/2012
Dr. Douglas Moore, Billings Qualifications (if required): none specified	Director	5/31/2012
Mr. Travis Hoffman, Missoula Qualifications (if required): none specified	Director	5/31/2012
Ms. Fawn Tadios, Box Elder Qualifications (if required): none specified	Director	5/31/2012

**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Montana Health Coalition</b> (Public Health and Human Services) cont.                      Ms. Karen Rizor, Ashland                      Qualifications (if required): none specified</p>	Director	5/31/2012
<p>Dr. Steve Helgerson, Helena                      Qualifications (if required): none specified</p>	Director	5/31/2012
<p><b>Montana Heritage Preservation and Development Commission</b> (Commerce)                      Mr. F.W. Bill Howell, West Yellowstone                      Qualifications (if required): tourist facility manager</p>	Governor	5/23/2012
<p>Ms. Barbie Durham, Cameron                      Qualifications (if required): business person</p>	Governor	5/23/2012
<p><b>Montana Noxious Weed Management Advisory Council</b> (Agriculture)                      Ms. Jennifer Anderson, Livingston                      Qualifications (if required): representative of the Sportsman/Wildlife Group</p>	Director	6/30/2012
<p>Mr. Cantalupo Nico, Baker                      Qualifications (if required): At-Large representative</p>	Director	6/30/2012
<p>Mr. Kenneth W. Smith, Kalispell                      Qualifications (if required): representing the livestock/agriculture industry</p>	Director	6/30/2012
<p><b>Montana Potato Commodity Advisory Committee</b> (Agriculture)                      Mr. Bill Buyan, Sheridan                      Qualifications (if required): not specified</p>	Director	5/20/2012

**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>Montana Potato Commodity Advisory Committee</b> (Agriculture) cont.                      Mr. Art Mangels, Dillon                      Qualifications (if required): not specified</p>	Director	5/20/2012
<p><b>Petroleum Tank Release Compensation Board</b> (Environmental Quality)                      Mr. Roy Morris, Butte                      Qualifications (if required): service station dealer</p>	Governor	6/30/2012
<p>Mr. Daniel Annala, Geysers                      Qualifications (if required): public representative</p>	Governor	6/30/2012
<p><b>Postsecondary Scholarship Advisory Council</b> (Office of Higher Education)                      Mr. LeRoy Schramm, Helena                      Qualifications (if required): having experience in postsecondary education</p>	Governor	6/20/2012
<p><b>Public Employees Retirement Board</b> (Administration)                      Mr. John Nielsen, Glendive                      Qualifications (if required): public employee active in retirement system</p>	Governor	4/1/2012
<p><b>State-Tribal Economic Development Commission</b> (Commerce)                      Mr. Loren Stiffarm, Harlem                      Qualifications (if required): representative of the Fort Belknap Community</p>	Governor	6/30/2012



**VACANCIES ON BOARDS AND COUNCILS -- APRIL 1, 2012 THROUGH JUNE 30, 2012**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<p><b>State-Tribal Economic Development Commission</b> (Commerce) cont.            Mr. Shawn Real Bird, Garryowen            Qualifications (if required): representative of the Crow Tribe</p>	Governor	6/30/2012
<p>Mr. Russell Boham, Great Falls            Qualifications (if required): representative of the Little Shell Band of Chippewa</p>	Governor	6/30/2012
<p>Ms. Delina Cuts The Rope, Harlem            Qualifications (if required): representative of the Fort Belknap Community</p>	Governor	6/30/2012
<p>Mr. Randy Randolph, Havre            Qualifications (if required): representative of the Little Shell Band of Chippewa</p>	Governor	6/30/2012
<p>Ms. Yolanda Old Dwarf, Crow Agency            Qualifications (if required): representative of the Crow Tribe</p>	Governor	6/30/2012
<p><b>UM Western Local Executive Board</b> (University System)            Commissioner Garth Haugland, Dillon            Qualifications (if required): public representative</p>	Governor	4/15/2012