

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 8

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

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

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

In the matter of the proposed)	NOTICE OF PROPOSED
amendment of ARM 2.43.3502	)	AMENDMENT
pertaining to the investment policy)	
statement for the Defined	)	NO PUBLIC HEARING
Contribution Retirement Plan and	)	CONTEMPLATED
ARM 2.43.5102 pertaining to the)	
investment policy statement for the)	
457 Deferred Compensation Plan)	

TO: All Concerned Persons

1. On June 25, 2010, the Montana Public Employees' Retirement Board (PER Board) proposes to amend the above-stated rules.

2. The PER Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the PER Board no later than 5:00 p.m. on May 14, 2010, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-2578; TDD (406) 444-1421; fax (406) 444-5428; or e-mail dhelman@mt.gov.

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

2.43.3502 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 401(a) Defined Contribution Plan Investment Policy Statement approved by the board on ~~January 8, 2009~~ February 11, 2010.

(2) The board adopts and incorporates by reference the State of Montana ~~401(a) Plan Full Discretion Guidelines for the Stable Value Investment Option~~ Guidelines Schedule approved by the board on ~~February 22, 2004~~ December 29, 2009.

(3) remains the same.

AUTH: 19-3-2104, MCA

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

2.43.5102 ADOPTION OF INVESTMENT POLICY STATEMENT AND STABLE VALUE FUND INVESTMENT GUIDELINES (1) The board adopts and incorporates by reference the State of Montana 457 Plan (deferred compensation)

Investment Policy Statement approved by the board on ~~January 8, 2009~~ February 11, 2010.

(2) The board adopts and incorporates by reference the State of Montana ~~457 Plan Full Discretion~~ Stable Value Investment Guidelines for the stable value investment option Schedule approved by the board on ~~December 13, 2007~~ December 29, 2009.

(3) remains the same.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

REASON: The PER Board, as the administrator of the Defined Contribution Retirement Plan (DCRP) of the Public Employees' Retirement System and the Deferred Compensation Plan (457 Plan), adopted the original investment policy statements for both plans by reference in 2002. The PER Board last amended both investment policy statements on February 11, 2010.

The recent amendments impact both the Deferred Compensation and the Defined Contribution plans' investment policy statements (IPS):

(1) The PER Board amended Section III.B.1.a (Investment Selection Guidelines – Requirements) of the DCRP IPS to correct the acronym for the Chartered Financial Analyst Institute, or CFA Institute. The acronym was correct in the 457 Plan IPS.

(2) The PER Board also amended Section IV.A. (Constraints – Liquidity Needs) for each IPS. The PER Board, on the advice of its Employee Investment Advisory Council and with the concurrence of its investment consultant, Michael Schlachter of Wilshire Associates, determined there to be no real difference in the liquidity needs of the plans. The PER Board therefore deleted the reference to moderate liquidity needs in the DCRP IPS and the reference to high liquidity needs in the 457 IPS.

The PER Board believes the remaining language, "MPERB must ensure that sufficient liquid assets are available to meet the plan's liquidity needs while also ensuring daily investment earnings on those assets" is adequate to describe the liquidity needs of the plans. There need be no reference to whether those needs are moderate or high.

(3) The PER Board has adopted entirely new Stable Value Fund Investment Guidelines to be applied to the stable value fund in both the DCRP and the 457 Plan. Due to the recent economic downturn, Aegon, the entity that provides book value protection to stable value participants, now requires the use of Aegon's "standard" investment guidelines, with the recognition that some flexibility and customization is necessary. Aegon, PIMCO (the stable value plans' investment manager), and the PER Board have agreed upon new guidelines that allow Aegon to appropriately manage risk and provide greater security for stable value fund participants, while permitting PIMCO to continue to obtain adequate yield on those investments.

The PER Board determined to adopt the original investment policy statements by reference. Because 2-4-307(3), MCA, requires that changes to documents also be adopted by reference, it is necessary to amend the rules that adopt the statements by reference.

4. Concerned persons may present their data, views, or arguments concerning the proposed amendments in writing to Roxanne M. Minnehan, Executive Director, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana 59620-0131; telephone (406) 444-5459; fax (406) 444-5428; or e-mail rminnehan@mt.gov and must be received no later than 5:00 p.m., May 28, 2010.

5. If persons who are directly affected by the proposed amendment wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments they have to Dena Helman at the above address no later than 5:00 p.m., May 28, 2010.

6. If the board receives requests for a public hearing on the proposed amendment from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed amendment; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 1043 persons based on approximately 2367 participants in the Defined Contribution Retirement Plan and 8070 participants in the Deferred Compensation Plan as of December 2009, for a total 10,437 participants.

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

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

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

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

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

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

/s/ Michael P. Manion
Michael P. Manion
Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State April 19, 2010.

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

In the matter of the adoption of New	)	NOTICE OF PROPOSED
Rule I pertaining to the adoption by	)	ADOPTION AND AMENDMENT
reference of the State of Montana)	
Public Employees Pooled Trust, and	)	NO PUBLIC HEARING
the amendment of ARM 2.43.3501	)	CONTEMPLATED
and 2.43.5101 pertaining to the)	
adoption by reference of the State of)	
Montana Public Employee Defined)	
Contribution Plan Document and the)	
State of Montana Public Employee)	
Deferred Compensation (457) Plan)	
Document, respectively)	

TO: All Concerned Persons

1. On June 25, 2010, the Montana Public Employees' Retirement Board (PER Board) proposes to adopt and amend the above-stated rules.

2. The PER Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the PER Board no later than 5:00 p.m. on May 14, 2010, to advise us of the nature of the accommodation that you need. Please contact Dena Helman, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail dhelman@mt.gov.

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

NEW RULE I ADOPTION OF STATE OF MONTANA PUBLIC EMPLOYEES POOLED TRUST (1) The board adopts and incorporates by reference the Declaration of Trust – State of Montana Public Employees Pooled Trust that was approved by the board on September 10, 2009, and became effective on January 1, 2010.

(2) Copies of the State of Montana Public Employees Pooled Trust and related materials may be obtained from MPERA, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, MT 59620-0131, telephone 1 (877) 275-7372, or e-mail mpera@mt.gov, and are available on MPERA's web site at www.mpera.mt.gov.

AUTH: 19-3-2104, 19-50-102, MCA
IMP: 19-3-2102, 19-50-102, MCA

REASON: Before January 1, 2010, the State of Montana's Deferred Compensation (457) Plan and the State of Montana's Defined Contribution Retirement Plan (DCRP)

each contained an investment option known as a stable value fund. Both funds were managed by PIMCO and wrapped or insured by Aegon. The PER Board determined that the assets of the two plans allocated to the stable value fund options would be more efficiently managed if pooled and commingled in a group trust for investment purposes. The pooling and commingling of these funds required the PER Board to enter into a Declaration of Trust creating a pooled trust under which the assets in the two stable value funds would be jointly invested but separately maintained and accounted for. Aegon, PIMCO, and State Street Bank, the funds' custodian, supported the board's endeavor and entered into revised contracts and agreements to implement the pooled trust. The pooled trust was approved by the PER Board at its September 2009 meeting for implementation effective January 1, 2010.

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

2.43.3501 ADOPTION OF DEFINED CONTRIBUTION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board adopts and incorporates by reference the following:

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

(b) and (2) remain the same.

AUTH: 19-3-2104, MCA

IMP: 19-3-2102, MCA

2.43.5101 ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT (1) The board adopts and incorporates by reference the following:

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

(b) State of Montana Public Employee Deferred Compensation Plan Trust Agreement (January 1, 2002 edition), that was approved by the board on February 22, 2001, and September 28, 2001.

(2) remains the same.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

REASON: On February 11, 2010, the PER Board amended the DCRP plan document and the Deferred Compensation plan document to reflect the adoption of the Pooled Trust (referenced above) as part of each plan.

The PER Board determined to adopt the original plan documents by reference. Because 2-4-307(3), MCA, requires that changes to the documents also be adopted

by reference, it is necessary to amend the rules that adopt the statements by reference.

5. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Roxanne M. Minnehan, Montana Public Employee Retirement Administration, 100 North Park Avenue, Suite 200, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-5459; fax (406) 444-5428; or e-mail rminnehan@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

6. 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 Dena Helman at the above address no later than 5:00 p.m., May 28, 2010.

7. 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 adoption or amendments; 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 1043 persons based on approximately 2367 participants in the Defined Contribution Retirement Plan and 8070 participants in the Deferred Compensation Plan as of December 2009, for a total 10,437 participants.

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

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 this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that if a discrepancy exists between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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

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

/s/ John Nielsen
John Nielsen
President
Public Employees' Retirement Board

/s/ Michael P. Manion
Michael P. Manion
Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State April 19, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
2.59.1701 pertaining to definitions; the	)	ON PROPOSED AMENDMENT,
adoption of NEW RULES I through IX	)	ADOPTION, AND REPEAL
regarding mortgage loan originator)	
licensing; and the repeal of ARM)	
2.59.1705 pertaining to continuing)	
education provider requirements)	

TO: All Concerned Persons

1. On May 20, 2010, at 10:00 a.m., a public hearing will be held in Room 342 of the Park Avenue Building, 301 S. Park, Helena, Montana, to consider the proposed amendment, adoption, and repeal of the above-stated rules.

2. The Department of Administration, Division of Banking and Financial Institutions, 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 Division of Banking and Financial Institutions no later than 5:00 p.m. on May 13, 2010, to advise us of the nature of the accommodation that you need. Please contact Christopher Romano, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; telephone (406) 841-2928; TDD (406) 444-1421; facsimile (406) 841-2930; e-mail to cromano@mt.gov.

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

2.59.1701 DEFINITIONS For purposes of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act and this subchapter, the following definitions apply:

(1) remains the same.

(2) "Compensation or gain" means the receipt or the expectation of receiving anything of value in conjunction with offering or negotiating terms of a residential mortgage loan and is not limited to payments that are contingent upon the closing of a loan.

(3) "Dwelling" means a residential structure that contains one to four residential units whether or not that structure is attached to real property and includes an individual condominium unit, cooperative unit, mobile home, and a trailer, if used as a residence.

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

(5) "Extant" means currently or actually existing; still existing; not destroyed or lost.

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

(8) "Mortgage loan servicer" means one who performs traditional mortgage loan servicing tasks such as sending monthly payment statements; collecting monthly payments; maintaining records of payments and balances; collecting and paying taxes and insurance; remitting funds to note holders; or following up on delinquencies provided the follow-up does not include offering or negotiating loan modifications or refinances.

(5) through (8) remain the same, but are renumbered (9) through (12).

AUTH: 32-9-125, 32-9-130, MCA

IMP: 32-9-102, 32-9-103, 32-9-109, 32-9-116, 32-9-117, 32-9-120, 32-9-122, 32-9-123, 32-9-125, 32-9-127, 32-9-133, MCA

STATEMENT OF REASONABLE NECESSITY: The definitions included in this rule are needed to clarify terms found in the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act (the Act).

The definition of "compensation or gain" is consistent with the definition and explanation of the same term in the U.S. Department of Housing and Urban Development's (HUD) rule proposal notice, 24 CFR Parts 30, 3400, Docket No. FR-5272-P-01, dated November 11, 2009, implementing the Secure and Fair Enforcement Mortgage Licensing Act of 2008 (SAFE Act), Title V of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 1501-1517, 122 Stat. 2654, 2810-2824 [July 30, 2008]).

The term "dwelling" is found in the definition of "residential mortgage loan" in 32-9-103(30), MCA. The definition of "dwelling" in this rule is consistent with the definition of that term in Regulation Z, section 226.2, implementing Truth in Lending, 15 USC 1601, et seq. and is necessary to understand the scope of the term "residential mortgage loan".

The term "extant" is used in NEW RULE IX and clarifies why a conviction that disqualifies an individual from licensure under 32-9-120(1)(b), MCA, is not nullified by the expungement of the record of the conviction. Only a pardon nullifies the conviction. The term and its definition and usage in the context of expunged convictions in NEW RULE IX are consistent with HUD's rule proposal notice.

The department has received several questions from the public about whether "mortgage loan servicers" must be licensed. The definition of that term in this rule clarifies that traditional loan servicer activities are distinguished from loan originator activities. The definition is consistent with HUD's position on mortgage loan servicers expressed in its rule proposal notice. A mortgage loan servicer would not need to be licensed provided the servicer does not offer or negotiate loan terms with borrowers including terms of loan modifications or refinancing within the meaning of "mortgage loan originator" under 32-9-103(23), MCA. HUD has stated that loan servicers often perform tasks that go beyond traditional loan servicer activities. Such nontraditional activities sometimes include negotiating modifications of residential mortgage loans or terms of refinancing requiring licensure. Job titles do not determine whether individuals must be licensed. Four additional citations to the Montana Code Annotated are being added to the existing implementation citations for the rule to reflect that the new terms being defined in the rule implement those statutes.

4. The proposed new rules provide as follows:

NEW RULE I LICENSING EXEMPTIONS AND VOLUNTARY REGISTRATION BY EXEMPT ENTITIES WITH THE NATIONWIDE MORTGAGE LICENSING SYSTEM (NMLS) (1) Any person claiming to be exempt under 32-9-104, MCA, from the licensing requirements of the Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act must receive an exemption from the department before engaging in activities claimed to be exempt. A claim form may be found online at www.banking.mt.gov.

(2) A mortgage company entity that is exempt from licensing requirements under 32-9-104, MCA, may voluntarily register through NMLS for the purpose of sponsoring a mortgage loan originator licensee or license applicant. Any fee for such registration must be determined by NMLS and must be payable as directed by NMLS.

(3) For purposes of the licensing exemption in 32-9-104(1)(j), MCA, "bona fide low income individuals" are individuals:

(i) whose income is at or below the U.S. Department of Health and Human Services Poverty Guidelines for Montana in effect at the time the loan application is processed, adjusted for size of household, as published in the Federal Register under authority of 42 USC 9902(2);

(ii) whose income does not exceed 80% of the median income in the applicable area of Montana as determined by the U.S. Department of Housing and Urban development, adjusted for size of household; or

(iii) who are eligible under the income criteria for Habitat for Humanity housing assistance in the Montana county of the individual's residence.

AUTH: 32-9-130, MCA

IMP: 32-9-104, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to establish the procedure for asserting an exemption claimed under 32-9-104, MCA. Section (2) providing for voluntary registration through NMLS by exempt mortgage companies allows those entities to sponsor loan originators/applicants that must be licensed even though the mortgage company entity itself is exempt from licensure. An exempt entity may voluntarily obtain a registration through the NMLS in order to manage its employees or to provide a surety bond covering their employees' mortgage loan origination activities.

Section (3) clarifies the exemption for certain 501(c)(3) corporations from licensing requirements under 32-9-104(1)(j), MCA. The term "bona fide low income individuals" is not defined in statute. The department reviewed numerous sources for information concerning "low income" individuals, including the U.S. Census Bureau median income statistics by state and by size of household, maximum household income for Habitat for Humanity eligibility, the definition of "low-income" in 90-6-132, MCA, related to Montana Board of Housing housing assistance, and the "U.S. Department of Health and Human Services Poverty Guidelines." The figures vary widely. The department specifically invites public comment on its proposed

definition of "bona fide low income individuals" to ensure that the exemption provided in 32-9-104(1)(j), MCA, is neither too narrowly nor too broadly interpreted.

NEW RULE II REQUEST FOR CORRECTION OR AMENDMENT OF DEPARTMENT-GENERATED RECORD IN THE NMLS (1) For purposes of accuracy or completeness, a person about whom the department has generated a record in the NMLS may make a written request to the department that it correct or amend the record. The written request must not exceed one side of an 8x11 sheet of paper in length and must concisely set out the basis for the person's contention that the record is either inaccurate or incomplete. At the time of making the written request for correction or amendment, the person shall provide a copy of any documentation that the person wishes the department to consider supporting the contention that the department's record is inaccurate or incomplete.

(2) As promptly as required by the circumstances after receiving a request as provided in (1), the department shall:

- (a) make the requested correction or amendment; or
- (b) inform the person in writing of the department's refusal to correct or amend the record and the reason for the refusal.

(3) A copy of the person's concise written statement as provided for in (1), the department's written refusal to correct or amend the record, and the reason for the refusal must be made available to any person requesting it from the department.

AUTH: 32-9-130, MCA

IMP: 32-9-155, MCA

STATEMENT OF REASONABLE NECESSITY: Section 32-9-155, MCA, requires that the department provide a means by which mortgage brokers, mortgage lenders, and mortgage loan originators may challenge information entered into NMLS by the department. This rule implements that requirement by providing a fair opportunity and procedure for a person to establish the record is wrong or incomplete or to have the person's disagreement with the department's record be made known. In drafting this rule, the department reviewed other states' rules relating to the issue as well as Montana laws relating to challenges to the accuracy of health care records. This rule incorporates what the department deemed were the best elements from several sources.

NEW RULE III MORTGAGE LOAN ORIGINATOR LICENSING EXAM RETAKES (1) A candidate for mortgage loan originator licensure shall request and pay for a separate test enrollment through the NMLS at <http://www.nationwidelicensingsystem.org> each time the candidate takes a national or state examination component.

(2) Retakes of the mortgage loan originator licensing examination following failed attempts and the waiting periods applicable to retakes are governed by the following table:

TEST ATTEMPT	TEST RESULT	RETAKE WAITING PERIOD
Initial	Fail	30 days
2nd	Fail	30 days
3rd	Fail	30 days
4th	Fail	180 days
Initial	Fail	30 days
(Retake cycle repeats)		

(3) The waiting period between exam attempts applies independently to each examination component (national and state). Failing one component does not impose a waiting period for another component.

(4) Candidates who pass an examination component may not retake that examination component again except as provided in (6).

(5) A candidate may request and pay for a new test enrollment window through NMLS immediately following the failure of an examination. The window will not allow the candidate to reschedule the examination for a date before expiration of the applicable waiting period.

(6) If an individual fails to continuously maintain a valid current Montana mortgage loan originator license or registration or combination thereof for a five-year period, but has maintained a mortgage loan originator license in another state or a mortgage loan originator registration or combination thereof during that period, the individual shall reapply for a license, requalify, pay the applicable fee, and shall retake and pass only the state component examination as a prerequisite to being relicensed in Montana. For purposes of determining failure to continuously maintain a "valid current" Montana license for a five-year period, a suspended license is not deemed a "valid current" Montana license during the period of suspension.

AUTH: 32-9-130, MCA

IMP: 32-9-110, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to clarify that NLMS will administer test enrollments, test administrations (both state and national components), and fees. The department's share of fees is remitted to it by NMLS. The rule is a resource for applicants at the state level so confusion between state and NMLS roles is minimized.

The rule also implements and clarifies the examination waiting periods set by 32-9-110(5) and (6), MCA. Subsection (5) of that statute refers to "retakes" of the test. The term "retakes" does not include the initial attempt to pass it. In contrast, subsection (6) of the statute does not refer to "retakes" but only to "tests." There has been considerable confusion even among the department's staff members as to whether a loan originator applicant must wait 180 days after failing their third consecutive test or whether the 180-day waiting period applies only after the applicant fails their fourth consecutive test, i.e., their third "retake." The table included in this rule comes from the NMLS web site and it clarifies the narrative text of 32-9-110(5) and (6), MCA.

In its comment to HUD's proposed rules implementing the SAFE Act, the Conference of State Bank Supervisors (CSBS) requested that HUD adopt an interpretation consistent with the table contained in this rule thereby resolving any ambiguity in the SAFE Act in favor of test candidates. This rule will be amended if HUD's final rule conflicts with it, but the department does not expect that CSBS's comment to HUD will be controversial.

The prohibition against retaking a test component already passed, except as provided by 32-9-110(7), MCA, helps preserve the integrity of the tests by minimizing unnecessary exposure of test questions to persons who have already passed the test. The prohibition helps to ensure that persons who take the examinations do so in order to be licensed, not to gain knowledge of the test questions for other purposes.

Section (6) of the proposed rule clarifies that the reference to "a valid license" in 32-9-110(7), MCA, refers to a current valid Montana license. It further clarifies that only the state component of the test need be retaken and passed if the applicant has maintained a mortgage loan originator license in another state or a registration as provided in 32-9-104(1)(c), MCA, during any five-year period that the applicant did not maintain a valid current license in Montana. A person whose license is suspended is not authorized to engage in activities requiring licensure.

NEW RULE IV ADOPTION OF STANDARDIZED FORMS AND PROCEDURES OF THE NMLS (1) The Nationwide Mortgage Licensing System Policy Guidebook dated January 25, 2010, is approved and adopted by reference. It can be found at <http://mortgage.nationwidelicensingsystem.org/slr/common/policy/Pages/default.aspx>.

(2) The following standardized NMLS forms relating to licensing are approved and adopted by reference:

(a) MU1 Uniform Mortgage Lender/Mortgage Broker form dated January 25, 2010;

(b) MU2 Uniform Mortgage Biographical Statement & Consent Form dated January 25, 2010;

(c) MU3 Uniform Mortgage Branch Office Form dated January 2, 2008; and

(d) MU4 Uniform Individual Mortgage License/Registration & Consent Form dated January 25, 2010.

(3) Copies of the NMLS forms are available on the department's web site www.banking.mt.gov for review and informational purposes only. All standardized forms to be submitted to the department must be accessed through NMLS and submitted electronically. Supplemental hard copy materials required for verification of qualifications must be submitted to the department at Division of Banking and Financial Institutions, 301 S. Park Ave., P.O. Box 200546, Helena, MT 59620-0546.

AUTH: 32-9-130, MCA

IMP: 32-9-105, 32-9-107, 32-9-112, 32-9-114, 32-9-117, 32-9-118, 32-9-127, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is needed to ensure that Montana applicants for all types of licenses and for registrations authorized under Title 32, Chapter 9, MCA, use NMLS standardized forms and submit them electronically through the NMLS. Use of standardized forms and NMLS procedures facilitate uniformity among the states to the maximum extent possible, which is consistent with the purposes of the NMLS and the SAFE Act.

NEW RULE V TRANSITION AND INITIAL LICENSE APPLICATION THROUGH NMLS – LICENSE RENEWALS – FEES (1) Each mortgage broker entity, mortgage broker branch, mortgage lender entity, mortgage lender branch, and mortgage loan originator holding a temporary Montana license that expires on April 1, 2010, shall properly complete and submit a license application through NMLS by March 1, 2010. A license issued under this rule is valid for the period April 1, 2010, through December 31, 2010. The department's prorated fees for the license period April 1, 2010, through December 31, 2010, are:

Mortgage Broker Entity	\$375.00
Mortgage Broker Branch	187.50
Mortgage Lender Entity	562.50
Mortgage Lender Branch	187.50
Mortgage Loan Originator	300.00

The department's prorated fees must be remitted directly to the department at Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546 by check or money order. In addition to the state fees, the NMLS charges processing fees that must be submitted to the NMLS.

(2) Each mortgage broker entity, mortgage broker branch, and mortgage loan originator holding a temporary Montana license that expires June 30, 2010 shall properly complete and submit a license application through the NMLS by May 31, 2010. A license issued under this section is valid for the period July 1, 2010 through December 31, 2010. The department's prorated fees for the license period of July 1, 2010, through December 31, 2010 are:

Mortgage Broker Entity	\$250.00
Mortgage Broker Branch	125.00
Mortgage Loan Originator	200.00

The department's prorated fees must be remitted directly to the department at Division of Banking and Financial Institutions, P.O. Box 200546, Helena, MT 59620-0546 by check or money order. In addition to the state fees, the NMLS charges processing fees which must be submitted to the NMLS.

(3) Licenses issued under this rule expire December 31, 2010. Licensees shall submit their renewal applications by December 1 of each year to assure issuance of the license to qualified renewal applicants by January 1 of the following year. The renewal fees for the license period January 1 through December 31 are:

Mortgage Broker Entity	\$500.00
Mortgage Broker Branch	250.00
Mortgage Lender Entity	750.00
Mortgage Lender Branch	250.00
Mortgage Loan Originator	400.00
(except as provided in 32-9-117, MCA)	

AUTH: 32-9-117, 32-9-130, MCA
IMP: 32-9-117, MCA

STATEMENT OF REASONABLE NECESSITY: New Rule V is necessary in order to transition from the temporary/provisional licenses issued by the department under ARM 2.59.1718, 2.59.1719, or 2.59.1720 to the initial licenses issued by the department through the NMLS for a partial year at a prorated fee. Remittal of prorated fees to the department directly under (1) and (2) is necessary because NMLS is not able to accept and process state fees in less than the total amount for a full year. By December 31, 2010, licensees will be regularly renewing their Montana licenses through NMLS for a one-year term at the full renewal fee. After December 31, 2010, all fees will be remitted through NMLS, and NMLS will remit the department's fees to it.

The department anticipates that there will be no fiscal impact. The transitional license fees represent a proration of the regular license renewal fees that have been previously charged to mortgage brokers, mortgage lenders, and mortgage loan originators. Proration of the fees is appropriate because as a result of the transition to the NMLS, the department will be issuing licenses for a period less than one year. There is no change to the regular renewal fees which are also equivalent to what has been charged previously. Therefore, there is no anticipated increase or decrease in revenue resulting from this rule. There are currently 73 mortgage broker entities, 34 mortgage broker branches, 87 mortgage lender entities, 88 mortgage lender branches, and 718 mortgage loan originators.

NEW RULE VI CONFIDENTIALITY – AGREEMENTS AND SHARING ARRANGEMENTS (1) In addition to the trade associations specifically named in 32-9-160(2), MCA, the department may enter into agreements or sharing arrangements allowing the sharing of information and material with the following governmental agencies and associations representing governmental agencies:

- (a) State Regulatory Registry, LLC; and
- (b) Multi-State Mortgage Committee.

AUTH: 32-9-130, 32-9-160, MCA
IMP: 32-9-160, MCA

STATEMENT OF REASONABLE NECESSITY: Montana's effective participation in the NMLS is dependent upon being able to share information and material with government agencies and governmental associations representing governmental agencies including confidential information, provided that its confidential character is maintained.

The State Regulatory Registry, LLC, (SRR) was established by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). SRR's job is to develop and operate nationwide systems for state regulators in the financial services industry to enhance their abilities to protect consumers, improve supervision of and enforcement against licensees, and to streamline licensing and other processes for state agencies and the industry through use of technology and centralization of redundant state agency operations.

The Multi-State Mortgage Committee was established by the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR). The Committee's job is to develop a framework for the coordination and supervision of entities licensed by multiple states (i.e., multi-state mortgage entities or "MMEs") and a protocol for regulating MMEs, making the best use of resources such as joint or concurrent financial examinations with other states and assuring consistency and quality of the supervisory processes. This rule is needed to facilitate those processes.

NEW RULE VII REINSTATEMENT OF EXPIRED OR SUSPENDED LICENSES (1) Upon expiration of a license under 32-9-117, MCA, due to nonrenewal by the renewal date, the licensee shall immediately cease from engaging in the activities for which the license was issued. Except as provided in (3), the department may reinstate an expired license, provided that, within 30 days of the date of expiration, the following are submitted:

- (a) a properly completed license renewal application through NMLS;
- (b) the renewal fee;
- (c) the NMLS fee;
- (d) a late renewal fee of \$250;
- (e) proof that the licensee continues to meet standards for licensure under 32-9-127, MCA; and
- (f) proof of continuing education compliance.

(2) An expired license that is not reinstated within 30 days of the date of expiration in accordance with (1) is cancelled and may not be reinstated except as provided in (3). The holder of a cancelled license may reapply as a new license applicant.

(3) If nonrenewal and expiration of the license of a military member or reservist was the result of the licensee being on active duty status at the time of renewal, the license may be reinstated, if within 30 days of the licensee's discharge from active duty status, the department receives through NMLS an acceptable sponsorship request from the licensee's employing mortgage broker or mortgage lender and it receives outside of the NMLS renewal process within that 30-day period, the following:

- (a) a properly completed paper renewal application;
- (b) a full year renewal fee or, if the application is submitted on or after July 1, a half-year renewal fee;
- (c) the NMLS fee;
- (d) proof of completion of 12 hours of approved continuing education;

(e) copies of the federal government orders by which the licensee was placed on active duty status and discharged from active duty status; and

(f) proof that the licensee continues to meet standards for licensure under 32-9-127, MCA.

(4) Upon suspension of a license under 32-9-126, MCA, the licensee shall immediately cease from engaging in the activities for which the license was issued. The department may lift the suspension and reinstate the license upon its determination that the licensee has complied with the terms and conditions of the final order by which the license was suspended and there is no fact or condition then existing that disqualifies the licensee from being licensed. The department on its own or at the licensee's request may initiate a review of a suspended licensee's compliance with the terms and conditions of the order suspending the license.

AUTH: 32-9-130, MCA

IMP: 32-9-117, 32-9-126, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to clarify the effect of the license statuses identified in 32-9-117(2) and 32-9-126(4), MCA, and identify when and under what circumstances licenses in those statuses may be reinstated and when and under what circumstances a new application for license has to be submitted. Defining a time period during which an expired license may be reinstated and after which a new license application is necessary encourages timely renewals and facilitates the orderly administration of the renewal process by staff.

The rule also sets a procedure by which a license that has expired while an individual is on active duty status can be reinstated at a later date without payment of a late renewal fee and without having to reapply as a new applicant. The NMLS removes license sponsorships when the license is set to be terminated/cancelled for nonrenewal. Therefore, following discharge from active duty status, the licensee should request that their employing mortgage broker or mortgage lender submit a new sponsorship request and NMLS fee to reestablish the sponsorship. Because continuing education courses for mortgage loan originators are available online, the requirement for compliance with continuing education requirements when renewing following discharge from active duty status should not pose an undue hardship on licensees who were on active duty status.

Suspension of a license may not occur except in the context of a notice and opportunity for hearing. To lift a suspension and reinstate the license requires the department to affirmatively determine whether the licensee has satisfied the requirements set by the order suspending the license and thus cannot be accomplished by paying a fee or applying anew.

NEW RULE VIII MORTGAGE CALL REPORTS (1) The mortgage call reports required to be submitted to the NMLS by mortgage brokers and mortgage lenders must be submitted on the form required by NMLS as frequently and on such dates as the NMLS sets.

(2) Each mortgage loan originator shall ensure that all residential mortgage loans that close as a result of the loan originator's activities are included in the

mortgage call reports of the loan originator's employing mortgage broker or mortgage lender.

AUTH: 32-9-130, MCA

IMP: 32-9-151, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to implement 32-9-151, MCA. NMLS shall determine the content and form of the call reports. The form is expected to be available in 2011. Section (2) incorporates HUD's position that loan originators must be responsible for ensuring inclusion of their loans in their employing entities' mortgage call reports while preserving the responsibility of the mortgage broker and mortgage lender entities to submit the reports as required by 32-9-151, MCA. HUD stated in its rule proposal notice that responsibility of the mortgage loan originators to ensure that the loans they originate are included in the call reports would not prevent the reports from being submitted at the institutional level by mortgage brokers and mortgage lenders.

NEW RULE IX EXPUNGEMENT OF FELONY RECORD (1) An individual is ineligible for a mortgage loan originator license or license renewal, even if the record of the individual's felony conviction of the type referred to in 32-9-120, MCA, has been expunged.

(2) Ineligibility for licensure is triggered by the conviction and not by an extant record of the conviction.

AUTH: 32-9-130, MCA

IMP: 32-9-120, MCA

STATEMENT OF REASONABLE NECESSITY: This rule is necessary to eliminate the confusion that exists concerning the effect of an expungement of the record of a conviction following, for example, the successful completion of a period of deferred sentence. The rule content is consistent with the position taken by HUD in the Assistant Secretary for Housing-Federal Housing Commissioner's rule notice dated November 11, 2009, 24 CFR Parts, 30, 3400, Docket No. FR-5271-P-01. Confusion relating to the effect of an expungement arises on a regular basis. Under 32-9-120(1)(b), MCA, only a pardon nullifies a conviction.

5. The department proposes to repeal the following rule:

2.59.1705 CONTINUING EDUCATION PROVIDER REQUIREMENTS, found on Administrative Rules of Montana page 2-6135.

AUTH: 32-9-130, MCA

IMP: 32-9-118, MCA

STATEMENT OF REASONABLE NECESSITY: In order to meet its mandate under the SAFE Act, NMLS requires that those individuals/organizations who desire to have their continuing education courses approved by NMLS must first register and

be granted approval to become "NMLS Approved" continuing education providers. Upon becoming NMLS-approved, course providers can then submit to have their courses approved by NMLS. NMLS's approval process for both course providers and courses assures that the quality of continuing education is consistent from state to state. That is important because under 32-9-118(3), MCA, an individual who has satisfactorily completed an NMLS-approved continuing education course anywhere must be given credit for that course for purposes of meeting the continuing education requirements in Montana. Because NMLS is administering the continuing education requirements of the SAFE Act, this rule is no longer necessary.

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 Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to lschneider@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

7. Lorraine Schneider, Legal Counsel, Division of Banking and Financial Institutions, has been designated to preside over and conduct the hearing.

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

9. The Division of Banking and Financial Institutions maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Such written requests may be mailed or delivered to Christopher Romano, Division of Banking and Financial Institutions, 301 S. Park, Ste. 316, P.O. Box 200546, Helena, Montana 59620-0546; faxed to the office at (406) 841-2930; e-mailed to cromano@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Jeff Essman, the primary bill sponsor of SB 351 (2009), was provided a copy of the working draft of the substantive content of the rules proposal on January 15, 2010, by U.S. mail at the address for him on the Secretary of State's

register of legislator contact information and his comments were invited. None were received.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State April 19, 2010.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 10.102.1150A, 10.102.1150B,	)	PROPOSED AMENDMENT
10.102.1150C, 10.102.1150D,)	
10.102.1150E, 10.102.1150F,)	
10.102.1150G, 10.102.1150H,)	
10.102.1150I, 10.102.1150J,)	
10.102.1150K, 10.102.1150L,)	
10.102.1150M and 10.102.1157)	
pertaining to library standards)	

TO: All Concerned Persons

1. On May 20, 2010, at 11:00 a.m., the Montana State Library will hold a public hearing in the Grizzly Conference room of the State Library, 1515 E 6th Ave, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Montana State Library 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 Montana State Library no later than 5:00 p.m. on May 13, 2010, to advise us of the nature of the accommodation that you need. Please contact Marlys Stark, Montana State Library, P.O. Box 201800, Helena, Montana, 59620-1800; telephone (406) 444-3384; fax (406) 444-0266; TTY (406) 444-3005; or e-mail mstark2@mt.gov.

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

10.102.1150A PUBLIC LIBRARY STANDARDS: GENERAL (1) remains the same.

(2) General essential standards for public libraries are as follows:

(a) The library is established under Montana's laws according to 22-1-301 through 22-1-317, 22-1-701 through 22-1-1711, or Title 7, MCA;

(b) The board conforms to all applicable state, local, and federal laws, rules, and regulations;

(c) Monthly, or at least ~~quarterly~~ every other month, library board meetings are held in an accessible location at times and a place convenient to the public and according to state laws on public meetings; and

(d) remains the same.

(3) General enhanced standards for public libraries are as follows:

(a) In order for the board to be knowledgeable about current library issues, new board members receive an orientation by the library director, a trustee, and/or others; and

(b) remains the same.

- ~~(c) Library board meetings are held every other month.~~
- (4) General excellent standards for public libraries are as follows:
 - (a) The library provides for continuing education for its trustees by allocating funds to support continuing education costs, including travel expenses;:
 - (b) At least two members of the library board will attend a regional or statewide library related activity each year;:
 - (c) Board members will discuss library issues with local government officials at least twice a year, and state and/or national government officials at least once a year;:
 - (d) Every ~~three~~ five years, the board will review, evaluate, and compare its own governance structure with different governance structures for the library. This includes districting, county library systems, etc;:
 - (e) At least three library board members join any professional library association and dues are paid by the library;: and
 - (f) At least two trustees are certified by the state library.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: The essential standard was stricter than the enhanced standard that says boards will meet every other month and boards that met quarterly might not have enough time to accomplish all of their duties. Reviewing governing structures is a lot of work and so having to review the structure every three years might be excessive. Reviewing every five years matches trustee terms. In five years the board may have changed, warranting a new look at governing structures. We wanted to recognize the new trustee track in the certification program as well as the libraries that participate. Some punctuation changes were needed to match the ARM standards.

10.102.1150B PUBLIC LIBRARY STANDARDS: POLICIES AND BYLAWS

- (1) General essential standards for public libraries are as follows:
 - (a) Every three years, the board reviews and updates its bylaws as necessary;:
 - (b) The board develops, studies, evaluates, reviews, updates, and adopts as necessary all library policies at least once every three years. When the board reviews library policies, the policies' effect on the library's relations with the public are evaluated;: and
 - (c) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: These punctuation changes are necessary to match ARM standards.

10.102.1150C PUBLIC LIBRARY STANDARDS: PLANNING AND EVALUATION

- (1) General essential standards for public libraries are as follows:
 - (a) The board uses the Montana Public Library Annual Statistical Report to review the library's year-to-year progress and performance;: and

- (b) ~~The library must have a written mission statement.~~
- (c) remains the same but is renumbered (b).
- (2) General enhanced standards for public libraries are as follows:
 - (a) The library has a written three- to five-year long-range plan, and reviews it annually. The long-range plan addresses services, facilities, public relations, technology, etc.;
 - (b) The board evaluates the library's performance against the stated objectives in the long-range plan; and
 - (c) remains the same.
- (3) General excellent standards for public libraries are as follows:
 - (a) Community representatives, the board, and the director develop a long-range plan for the library; and
 - (b) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: The mission statement does not seem valuable if the library does not have a strategic plan. This would also eliminate the possibility of libraries developing mission statements simply to meet this standard thereby creating something that doesn't have much meaning for their library. Additional punctuation changes were needed to match ARM standards.

- 10.102.1150D PUBLIC LIBRARY STANDARDS: FINANCE (1) General essential standards for public libraries are as follows:
- (a) The board and the director follow fiscal procedures consistent with state law and local government requirements in preparing, presenting, and administering its budget;
 - (b) Local tax revenues provide at least 50% percent of the support for the library. Grants, donations, and other revenue sources supplement but do not supplant local tax support;
 - (c) The director works with the board to develop an annual financial plan or budget; and
 - (d) Every three years ~~t~~The board and the director ~~annually~~ review the adequacy of insurance coverage for the collection and building, and update the coverage as necessary.
- (2) General enhanced standards for public libraries are as follows:
- (a) The library sets aside money in a depreciation fund to meet requirements for capital expenditures; and
 - (b) remains the same.
- (3) General excellent standards for public libraries are as follows:
- (a) The library has established a foundation or endowment;
 - (b) The foundation board and/or the library board develops a plan for planned giving;
 - (c) The foundation board and/or the library board establishes a policy regarding the acceptance of gifts of real and personal property, endowment funds, and planned giving;

- (d) The library has a Friends of the Library organization; and
- (e) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: Libraries are fairly stable in terms of the value of their building and collections so a three-year review is recommended. Some punctuation changes were needed to match ARM standards.

10.102.1150E HUMAN RESOURCES STANDARDS: LIBRARY DIRECTOR

- (1) General essential standards for public libraries are as follows:
 - (a) The board hires the director according to local, state, and federal regulations and delegates the day-to-day management of the library to the director; _i
 - (b) The board evaluates the performance of the director annually; _i
 - (c) Each public library has a paid director who is responsible for the administration of library services; _i
 - (d) Libraries that serve more than 25,000 people employ a library director with a graduate degree in library or information science or its equivalent; and
 - (e) ~~Libraries that serve less than 25,000 people employ a~~ All public library directors who is or will be within three years of hire certified by the state library.
- (2) General enhanced standards for public libraries are as follows:
 - (a) The director conducts a formal performance appraisal of each staff member at least annually; _i
 - (b) The library director informs the board of pending legislation that affects libraries on the local, state, and national levels; _i
 - (c) The library director reviews and updates procedures every three years; _i
and
 - (d) The library director ~~must~~ joins the State Library Association.
- (3) General excellent standards for public libraries are as follows:
 - (a) ~~The library director provides a climate that encourages development of innovative programs and projects by providing at least three informal staff discussions about innovative programs or opportunities.~~
 - (ba) The director keeps the community and funding officials aware of the library's purpose, planning, and services through the use of newspaper articles, web sites, radio programs, attending meetings, etc.; _i
 - (eb) The director forms collaborative partnerships with other agencies and organizations in the library's service area; _i
 - (ec) Libraries that serve less than 25,000 people employ a library director who has an AA/AS or higher degree; _i
 - (ed) In addition to the library director's annual evaluation, the library director is evaluated every three years by the board with the input of staff, library users, and/or library nonusers; and
 - (e) The board pays for the library director to join the State Library Association.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: The first change is necessary in order to reflect certification program changes. The second change adjusts the rule to read as language in other rules. The third change is due to the difficulty of measuring the standard. Library boards are encouraged to pay for trustees to join MLA so the final change is to encourage them to pay for the directors to do the same thing. Punctuation changes were made to match ARM standards.

10.102.1150F HUMAN RESOURCES STANDARDS: GENERAL

- (1) General essential standards for public libraries are as follows:
 - (a) The library board provides continuing education for the director and staff members by allocating funds to support continuing education costs, including travel expense and salary;
 - (b) Paid staff persons are present during 90% percent of all open hours;
 - (c) The board must adopt and review a personnel policy every three years;
 - (d) The library maintains written, up-to-date job descriptions; and
 - (e) remains the same.
- (2) General enhanced standards for public libraries are as follows:
 - (a) Volunteer programs have written policies, procedures, and job descriptions;
 - (b) Every staff member attends at least one continuing education eligible training program per year;
 - (c) Appropriate library staff have e-mail accounts available for communication and professional development;
 - (d) There is at least one personal computer for staff use only; and
 - (e) Staff receives in-house training or are encouraged to attend workshops.
- (3) General excellent standards for public libraries are as follows:
 - (a) Regardless of population, total library staff is not less than one full-time employee;
 - (b) The library board encourages and supports staff involvement in community organizations and activities; and
 - (c) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: This change is to help encourage libraries to offer training for their staff since it can help improve both morale and library services. Additional punctuation changes were needed to match ARM standards.

10.102.1150G HUMAN RESOURCES STANDARDS: ACCESS (1) General essential standards for public libraries are as follows:

- (a) The board and the director determine the days of the week and the hours during the day to be open to provide maximum service;
- (b) The library is open during the week at least the following minimum hours. Many libraries exceed this minimum because the community, the board, and the

director recognize that the number of hours of public service leads to greater use by the public. A library with more than one service outlet may use the total nonoverlapping hours of all outlets to meet the minimum requirement.;

Population	Minimum	Desirable
less than 3,500	15	25-40
more than 3,500	30	40-50
more than 10,000	40	50-60
more than 25,000	50	60+

(c) Library users who wish to copy materials available from noncirculating items or from computer files must have access to a photocopy machine or printer.;

(d) The library must have a telephone and answer telephone inquiries.;

(e) remains the same.

(2) General enhanced standards for public libraries are as follows:

(a) Library customers are able to access library information from remote locations.;

(b) When necessary, the library refers customers to other places to fulfill the customer's information needs.;

(c) Library has a web site where users can access electronic resources.

(3) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: The purpose for this change is to encourage libraries to have web sites since so many customers now use the Internet. Some punctuation changes were needed to match ARM standards.

10.102.1150H MATERIALS AND COLLECTIONS STANDARDS:

COLLECTION DEVELOPMENT (1) General essential standards for public libraries are as follows:

(a) The board adopts a collection management policy that it reviews every three years. The policy addresses the use of electronic resources.;

(b) The board and the director develop an annual materials budget as part of the library budget.;

(c) The library uses at least one professionally recognized review source.;

(d) remains the same.

(2) General enhanced standards for public libraries are as follows:

(a) The library cooperates with other community institutions to plan and implement access to electronic resources.;

(b) The library provides access to materials for those with disabilities and others who may have special needs.;

(c) through (2) remain the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: This change reflects current practice. Libraries may still receive feedback by asking a consultant for review or using the Collection Management Honor Roll as a vehicle for review and improvement. Additional punctuation changes were needed to match ARM standards.

10.102.1150I PUBLIC LIBRARY STANDARDS: ACCESS TO THE COLLECTION (1) General essential standards for public libraries are as follows:

- (a) Materials are purchased to ensure a steady flow of materials for the public; i
- (b) The library catalogs and organizes its collection according to standard cataloging and classification systems and procedures. Automated records comply with the machine-readable catalog (MARC) format; i and
- (c) remains the same.
- (2) General enhanced standards for public libraries are as follows:
 - (a) The library uses an online interlibrary loan system; i and
 - (b) remains the same.
- (3) General excellent standards for public libraries are as follows:
 - (a) The library collection is available online; i and
 - (b) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: These punctuation changes are necessary to match ARM standards.

10.102.1150J PUBLIC LIBRARY STANDARDS: COLLECTION EVALUATION (1) remains the same.

- (a) The library's collection is continually evaluated for additions and deletions based on the library's collection management policy. ~~The entire collection is evaluated within each three-year period.~~
- (2) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: It could be a hardship for libraries to give their entire collection a thorough evaluation every three years, but continual evaluation through purchase and weeding is encouraged and doable.

10.102.1150K PUBLIC LIBRARY FACILITIES STANDARDS (1) General essential standards for public libraries are as follows:

- (a) The board and the director evaluate the library building every three years to determine adequate space needs; i

- (b) The board and the director identify and attempt to address any identified facility shortcomings in a building plan-; ;
- (c) The library facility is safe for the public and staff-; and
- (d) remains the same.
- (2) General enhanced standards for public libraries are as follows:
 - (a) The library has an exterior sign visible from the nearest roadway that identifies it as the library-; ;
 - (b) The library has a public meeting area available-; and
 - (c) remains the same.
- (3) General excellent standards for public libraries are as follows:
 - (a) The library has adequate, well-lit parking-; and
 - (b) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: This change is intended to clarify the intent behind the rule which is to encourage evaluation of the facility, not the creation of a building plan. Punctuation changes were needed to match ARM standards.

10.102.1150L PUBLIC LIBRARY PUBLIC RELATIONS STANDARDS

- (1) General essential standards for public libraries are as follows:
 - (a) The library cooperates in state, regional, and national efforts to promote library services-; and
 - (b) remains the same.
- (2) General enhanced standards for public libraries are as follows:
 - (a) The library targets special groups within the community for programs or services (seniors, ethnic populations, etc.)-; ;
 - (b) Funds are budgeted for publicity either by the library and/or the Friends of the Library-; and
 - (c) remains the same.
- (3) General excellent standards for public libraries are as follows:
 - (a) The library allocates funds for public relations, has a community awareness program, and actively promotes its mission-; ;
 - (b) The library conducts a community assessment to evaluate the library's marketing efforts-; ;
 - (c) The library establishes or works with existing community advisory groups to encourage community involvement and improve service. Examples of such groups include youth, seniors, genealogy, local history, and other identified segments of the population-; ;
 - (d) The library has a Friends of the Library organization-; and
 - (e) The library maintains an up-to-date webpage site.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: Web site is a more accurate word to use since it encompasses both single and multiple web pages. Additional punctuation changes were needed to match ARM standards.

10.102.1150M PUBLIC LIBRARY SERVICES STANDARDS (1) General essential standards for public libraries are as follows:

(a) ~~On an annual survey, library customers indicate that they have received courteous and helpful service from all library staff. Every two years the library gathers feedback on library services from library users and non-users. The library can use a variety of methods, including but not limited to, surveys, focus groups, and community meetings;~~

(b) The library uses comparative statistics, annual surveys, or other methods to evaluate the services offered-;

(c) The library offers programming for children and adults-;

(d) The library has policies and/or procedures for services provided-;

(e) The library programming is free and open to all-;

(f) The library must make every effort to maintain confidentiality of library records as addressed in 22-1-1103, MCA-; and

(g) remains the same

(2) General enhanced standards for public libraries are as follows:

(a) The library provides information about the community to customers-;

(b) The library offers programming for children, adults, and young adults-;

and

(c) The library offers or makes patrons aware of virtual reference services.

(3) General excellent standards for public libraries are as follows:

(a) The library collaborates with other community organizations and educational institutions to promote library services-;

(b) The library provides library outreach services-;

(c) The library has a Friends of the Library organization-; and

(d) remains the same.

AUTH: 22-1-103, MCA

IMP: 22-1-103, 22-1-326, 22-1-327, 22-1-328, 22-1-329, 22-1-330, 22-1-331, MCA

REASON: The intent of this standard was to analyze library services and libraries can use a variety of methods to obtain this information. Patrons might find annual surveys irritating and the current standard doesn't mention nonusers. Many libraries struggle to develop a survey every year. Some punctuation changes were needed to match ARM standards.

10.102.1157 ADDITIONAL RECOMMENDED LIBRARY STANDARDS

(1) and (2) remain the same.

~~(3) A complete set of voluntary public library standards has been sent to all public libraries in a document labeled: Montana Public Library Standards, August 1999.~~

(43) Additionally, ~~t~~The full set of standards can be found on the state library's web site, page at: <http://msl.state.mt.us/admin/libstandards.htm>.

AUTH: 22-1-103, MCA
IMP: 22-1-103, MCA

REASON: The full set of standards will be maintained at all times on the state library's web site.

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: Marlys Stark, Montana State Library, P.O. Box 201800, Helena, Montana, 59620-1800; telephone (406) 444-3384; fax (406) 444-0266; or e-mail mstark2@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

5. State Librarian Darlene Staffeldt, Montana State Library, has been designated to preside over and conduct this hearing.

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

7. An electronic copy of this proposal notice is available through the 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/ Darlene Staffeldt
Darlene Staffeldt
Rule Reviewer

/s/ Donald Allen
Donald Allen
Chairman
Montana State Library

Certified to the Secretary of State April 19, 2010.

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

In the matter of the amendment of)
ARM 12.11.202, 12.11.205, 12.11.207,) NOTICE OF PUBLIC HEARINGS ON
12.11.212, 12.11.215 and 12.11.220) PROPOSED AMENDMENT
regarding recreational water use of the)
Beaverhead and Big Hole Rivers)

TO: All Concerned Persons

1. On May 26, 2010 at 6:00 p.m. the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at Beaverhead County Search and Rescue Building, 1116 Highway 41, Dillon, Montana, to consider the amendment of the above-stated rules.

On May 27, 2010 at 6:00 p.m. the commission will hold a public hearing at the War Bonnet Inn, 2100 Cornell Avenue, Butte, Montana, to consider the amendment of the above-stated rules.

2. The commission will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, please contact the commission no later than May 17, 2010, to advise us of the nature of the accommodation that you need. Please contact Jessica Fitzpatrick, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-9785; fax (406) 444-7456; e-mail jfitzpatrick@mt.gov.

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

12.11.202 RIVER DEFINITIONS The following definitions apply to this subchapter:

(1) "Beaverhead River" means that portion of the river from its headwaters to Jessen Park in Twin Bridges.

(2) "Big Hole River" means the river from its headwaters to its confluence with the Jefferson River.

(1) through (3) remain the same but are renumbered (3) through (5).

~~(4)~~ (6) "Official access site" means those river access sites that are publicly owned, managed, and maintained as an access point. The following are official access sites on the Big Hole River:

(a) through (q) remain the same.

(r) Mudd Creek Bridge BLM fishing access site.

(5) through (7) remain the same but are renumbered (7) through (9).

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.205 BEAVERHEAD RIVER RECREATIONAL USE RESTRICTIONS

(1) Starting on the third Saturday in May through Labor Day, recreational use of the Beaverhead River from Clark Canyon Dam to ~~its mouth~~ Jessen Park in Twin Bridges shall be allowed and restricted in designated river reaches as follows:

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

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.207 REVIEW OF RIVER RECREATION RULES FOR BEAVERHEAD RIVER (1) The commission shall review the rules governing recreational use on the Beaverhead River ~~within every five years after the adoption of these rules.~~

(2) remains the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.212 REVIEW OF RIVER RECREATION RULES FOR THE BIG HOLE RIVER (1) The commission shall review the rules governing recreational use on the Big Hole River ~~within every five years after the adoption of these rules.~~

(2) remains the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.215 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BEAVERHEAD RIVER (1) remains the same.

(2) An outfitter authorized to outfit on the Beaverhead River forfeits all his/her client days and is no longer authorized to outfit on the Beaverhead River if one or more of the following occur:

(a) an outfitter does not report any use for any two consecutive years, effective June 17, 2005;

(b) an outfitter did not report any use for the five years prior to December 31, 2004; or

(c) the license of an outfitter has ~~lapsed~~ expired.

(3) through (11) remain the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

12.11.220 NEW OUTFITTER MORATORIUM AND OUTFITTER RESTRICTIONS ON THE BIG HOLE RIVER (1) remains the same.

(2) An outfitter authorized to outfit on the Big Hole River forfeits all his/her client days and is no longer authorized to outfit on the Big Hole River if one or more of the following occur:

- (a) an outfitter does not report any use for any two consecutive years, effective June 17, 2005;
 - (b) an outfitter did not report any use for the five years prior to December 31, 2004; or
 - (c) the license of an outfitter has ~~lapsed~~ expired.
- (3) through (11) remain the same.

AUTH: 87-1-301, 87-1-303, MCA

IMP: 87-1-303, MCA

STATEMENT OF REASONABLE NECESSITY: Jessen Park provides the nearest upstream public float access to the upper section of the Jefferson River. Defining the Beaverhead River to end at Jessen Park in Twin Bridges would enable outfitters to gain float access to the upper Jefferson River regardless of whether they have been issued a Beaverhead or Big Hole permit and would enable permitted outfitters to use this access site to float the upper Jefferson River without having to use allocated client days. Defining the Big Hole River would clarify that the rules apply to the entire Big Hole River from its headwaters to its confluence with the Jefferson River.

Mudd Creek Bridge is incorrectly identified in the rules as a Fish, Wildlife and Parks fishing access sites. The site should be correctly identified as a Bureau of Land Management site.

A rule stating that the commission will review the rules every five years would ensure a periodic review occurs to assess the effectiveness of the rules.

Changing "lapsed" to "expired" would be more consistent with the Montana Board of Outfitters license status definitions and would clarify that an outfitter forfeits all of his/her client days and is no longer authorized to outfit on the Beaverhead and/or Big Hole rivers if their license has not been renewed within 45 days from the renewal date. A "lapsed license" means a license that has not been renewed by the license renewal date. A lapsed license may be reactivated at any time within 45 days following the license renewal date. This rule change would prevent the loss of outfitting privileges on the Beaverhead and/or Big Hole rivers solely due to failure to meet the license renewal date.

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: Fish, Wildlife and Parks, Charlie Sperry, P.O. Box 200701, Helena, MT 59620-0701, fax 406-444-4952, or e-mail them to csperry@mt.gov. Any comments must be received no later than June 4, 2010.

5. Charlie Sperry or another hearings officer appointed by the department has been designated to preside over and conduct these hearings.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife, and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

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

/s/ Bob Ream

Bob Ream, Chairman

Fish, Wildlife and Parks Commission

/s/ Robert N. Lane

Robert N. Lane, Rule Reviewer

Department of Fish, Wildlife and Parks

Certified to the Secretary of State April 19, 2010

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM) NOTICE OF PROPOSED
23.12.204, concerning juvenile records) AMENDMENT
)
) NO PUBLIC HEARING
) CONTEMPLATED

TO: All Concerned Persons

1. On June 11, 2010, the Department of Justice proposes to amend the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m. on May 21, 2010, to advise us of the nature of the accommodation that you need. Please contact Kathy Stelling, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail kstelling@mt.gov.

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

23.12.204 JUVENILE RECORDS (1) remains the same.

(2) The juvenile records listed in (1) must be physically sealed ~~three years after supervision for an offense ends~~ on the youth's 18th birthday, in accordance with the procedure and exceptions listed at 41-5-216, MCA. Once sealed, the records are no longer available for public inspection.

AUTH: 44-5-105, MCA

IMP: 41-5-216, 44-5-103, 44-5-301, MCA

REASON: This change is reasonably necessary to ensure that juvenile records are sealed on the youth's 18th birthday, not three years after supervision ends, as now required by 41-5-216, MCA.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Stuart Segrest, Department of Justice, 215 North Sanders, P.O. Box 201401, Helena, MT 59620-1401; telephone (406) 444-2026; Montana Relay Service 711; fax (406) 444-3549; or e-mail ssegrest@mt.gov, and must be received no later than 5:00 p.m. on May 27, 2010.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must

make written request for a hearing and submit this request along with any written comments they have to Stuart Segrest at the above address no later than May 27, 2010.

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 who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. The number of persons affected is at least 250.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above, or may be made by completing a request form at any rules hearing held by the department. A copy of the interested persons request form may be printed from the Department of Justice's web site at <http://doj.mt.gov/resources/administrativerules.asp>, and mailed to the rule reviewer.

8. An electronic copy of this notice is available through the Department of Justice web site at <http://doj.mt.gov/resources/administrativerules.asp>. 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 a person's difficulties in sending an e-mail do not excuse late submission of comments.

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

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 April 19, 2010.

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.180.401 fee schedule and) PROPOSED AMENDMENT AND
the adoption of NEW RULE I) ADOPTION
pertaining to continuing education)
provider qualifications)

TO: All Concerned Persons

1. On May 27, 2010, at 10:00 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 Plumbers (board) no later than 5:00 p.m., on May 21, 2010, to advise us of the nature of the accommodation that you need. Please contact Jason Steffins, Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2329; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2309; e-mail dlibsdlu@mt.gov.

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

<u>24.180.401 FEE SCHEDULE</u> (1) remains the same.	
(2) Application fee	\$ 60 <u>120</u>
<u>(a) Board-administered examination fee</u>	<u>400</u>
<u>(b) Board-administered reexamination fee</u>	<u>400</u>
(3) remains the same.	
(a) Journeyman	150 <u>180</u>
(b) Master	250 <u>325</u>
(4) remains the same.	
(a) Journeyman	135 <u>180</u>
(b) Master	225 <u>325</u>
(5) Medical gas endorsement application fee	60 <u>120</u>
(6) Medical gas endorsement renewal fee	20 <u>30</u>
(7) Out-of-state licensure fee	250 <u>300</u>
(8) remains the same.	
(9) and (10) remain the same but are renumbered (12) and (14).	
<u>(9) Master plumber of record fee</u>	<u>65</u>
<u>(10) Continuing education provider application fee</u>	<u>50</u>
<u>(11) Continuing education course fee</u>	<u>25</u>

(13) Fees are nonrefundable.

AUTH: 37-1-134, 37-69-202, 37-69-401, MCA

IMP: 37-1-134, 37-1-141, 37-1-304, 37-1-305, 37-69-303, 37-69-306, 37-69-308, 37-69-311, 37-69-401, MCA

REASON: The department, in providing administrative services to the board, has determined that unless the licensure fees are increased as proposed, the board will become insolvent by fiscal year 2011. Each proposed fee increase is necessary to comply with 37-1-134, MCA, and ensure fees remain commensurate with costs. The board is adding (13) to specify that all fees are nonrefundable to align with department policy and rule.

The board is also amending this rule by adding several new fees to ensure the fees are assessed to those receiving board services instead of being allocated to all licensees. The board is proposing a fee to cover costs for those instances when an exam vendor is not available and the board administers the examinations. A master plumber of record fee is proposed to cover the costs for board staff to compile, maintain, and update records that link master plumbers of record to the plumbing businesses for which they are responsible.

This board is also amending this rule to add fees for continuing education providers and courses and align with provisions in proposed New Rule I in this notice. The providers are utilizing the board's online reporting system more frequently, and the proposed fees will cover costs associated with processing data, entering changes, and approving and tracking each provider and course through the online system.

The proposed new fees and fee increases will affect approximately 1493 licensees, applicants, and continuing education providers and result in approximately \$102,110 in additional annual revenue. Following the proposed fee changes, the board and department do not anticipate having to consider another fee increase for several more years.

4. The proposed new rule provides as follows:

NEW RULE I QUALIFICATIONS - CONTINUING EDUCATION PROVIDER

- (1) An applicant for continuing education provider approval shall submit:
 - (a) a completed board-approved provider application with the required fees;
 - (b) a completed board-approved application for each course with the required fees;
 - (c) a sample completion certificate as outlined in ARM 24.180.2102(2)(d);
 - (d) documented proof from the provider that instructors are credentialed as outlined in ARM 24.180.2102(2)(b);
 - (e) a syllabus of each course; and
 - (f) documented proof of the course curriculum as outlined in ARM 24.180.2102(2)(a).
- (2) Application and course approval will be at the discretion of the board.
- (3) Courses will expire on September 1 of the year in which a subsequent code is adopted. The board may also withdraw course approval at any time upon a

determination by the board that amendments to statutes or rules make withdrawal of approval necessary or proper, or upon any other reasonable basis.

AUTH: 37-1-131, 37-1-319, 37-69-202, MCA

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

REASON: The board determined it is reasonable and necessary to propose New Rule I and set forth the particular requirements for continuing education (CE) provider applications, including specifying the documents needed to facilitate the approval process. The board has CE course approval requirements set forth in ARM 24.180.2102, but had not yet set forth the provider qualifications in rule.

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2309, or by e-mail to dlibsdpplu@mt.gov, and must be received no later than 5:00 p.m., June 4, 2010.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.plumber.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.

7. 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 Plumbers, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2309; e-mailed to dlibsdpplu@mt.gov; or made by completing a request form at any rules hearing held by the agency.

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

9. Tyler Moss, attorney, has been designated to preside over and conduct this hearing.

BOARD OF PLUMBERS
TIM REGAN, PRESIDING OFFICER

/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 April 19, 2010

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption of NEW) NOTICE OF PUBLIC HEARING ON
RULE I pertaining to the carbon) PROPOSED ADOPTION
monoxide detector standard)

TO: All Concerned Persons

1. On May 24, 2010, at 10:00 a.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rule.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 19, 2010, to advise us of the nature of the accommodation that you need. Please contact Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2053; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; e-mail dcook@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I CARBON MONOXIDE DETECTOR STANDARD (1) The department provides the following standard for the location, number, and type of approved carbon monoxide detectors required to be installed in dwelling units as provided by 70-20-113 and 70-24-303, MCA, of the Landlord Tenant Act:

(a) In dwelling units containing fuel-fired appliances or having attached garages, a carbon monoxide detector must be installed outside of each separate sleeping area in the immediate vicinity of the bedrooms.

(b) Single station carbon monoxide detectors must comply with Underwriters Laboratory (UL) 2034 and be installed in accordance with the manufacturers' installation instructions.

(2) Rules adopted under this subchapter may not be construed as part of the state building code provided in 50-60-203, MCA, and may only be enforced as provided in Title 70, chapter 24, part 4.

AUTH: 70-24-303, MCA

IMP: 70-20-113, 70-24-303, MCA

REASON: The 2009 Montana Legislature enacted Chapter 43, Laws of 2009 (Senate Bill 161), an act requiring a carbon monoxide detector in dwelling units rented by a landlord. The bill was signed by the Governor on March 20, 2009, became effective on October 1, 2009, and is codified at 70-24-303(1)(h), MCA.

The department determined it is reasonable and necessary to adopt New Rule I to implement the recent legislation which requires the department to define approved carbon monoxide detectors in dwelling units, under a landlord's control.

4. 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 department, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to cwhite@mt.gov, and must be received no later than 5:00 p.m., June 1, 2010.

5. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.buildingcodes.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.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions. 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 or areas of law 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 sent or delivered to the department, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2050, e-mailed to cwhite@mt.gov, or made by completing a request form at any rules hearing held by the agency.

7. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on February 23, 2010, by electronic mail.

8. Colleen White, attorney, has been designated to preside over and conduct this hearing.

/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 April 19, 2010

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

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

TO: All Concerned Persons

1. On May 24, 2010, at 1:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana to consider the proposed adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on May 19, 2010, to advise us of the nature of the accommodation that you need. Please contact Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2053; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2050; e-mail dcook@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2007 Montana Legislature enacted Chapter 443, Laws of 2007 (Senate Bill 51), an act revising growth policy and subdivision laws and requiring subdivision regulations to identify areas unsuitable for development. The bill was signed by the Governor and became effective on May 8, 2007. The department determined it is reasonable and necessary to adopt New Rules I through XIII to implement the legislation which requires the department to identify appropriate construction techniques for mitigation of fire hazards.

As required by 76-3-501, MCA, the governing bodies of every county, city, and town must adopt and provide enforcement of subdivision regulations. In turn, 76-3-504, MCA, requires such local subdivision regulations to provide for the identification of areas that are unsuitable for subdivision development because of natural or human-caused hazards. The regulations must prohibit subdivision in these areas, unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures, including those identified by the department under the direction of Title 50, chapter 60, part 9, Fire Mitigation Construction Techniques. The proposed rules were developed after a series of public meetings conducted by the department across the state and included various governmental officials and representatives of the private sector.

As restated in the body of the proposed new rules for emphasis, the proposed New Rules implement the 2007 legislation, which requires the department to merely identify appropriate construction techniques, from which local government officials may select and enforce individually or in combination, to mitigate identified fire

hazards. The rules and stated construction techniques are not part of the state building code and are not enforceable by the department's Building Codes Bureau.

4. The proposed new rules provide as follows:

NEW RULE I DEFINITIONS (1) As used in this subchapter, the following definitions apply:

- (a) "Accessory structure" means a building or structure utilized for sheltering equipment or materials, or for other uninhabitable occupancy purposes.
- (b) "Approved" means acceptable to the code official or authority having jurisdiction.
- (c) "Department" means the Department of Labor and Industry.
- (d) "Fire-resistance-rated construction" means the use of methods, materials, and systems in the construction of a structure to provide against the spread of fire within a structure and to or from a structure to the outside environment.
- (e) "Ignition-resistant building material" means a type of building material that resists ignition or sustained flaming combustion.
- (f) "International Building Code" means the International Building Code (IBC), adopted by ARM 24.301.131.
- (g) "International Residential Code" means the International Residential Code (IRC) adopted by ARM 24.301.154.
- (h) "Noncombustible" means a material that is either a material of which no portion will ignite and burn when fire is applied to it, or a material that has a structural base of noncombustible material with surface materials not in excess of 1/8 inch in thickness, which has a flame spread index of 50 or less.
- (i) Any material conforming to ASTM 136 shall be considered noncombustible.
- (ii) "Flame spread index" refers to the index obtained from tests conducted in ASTM E 84 or UL 723.
- (i) "Wildland-Urban Interface" (WUI), means that geographical area where structures and other human development meet or intermingle with wildland or vegetative fuels.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE II APPLICABILITY AND ENFORCEABILITY (1) For the purposes of this subchapter and pursuant to 50-60-901, MCA, the department provides the following construction techniques that may be used individually or in combination by a local government to mitigate identified fire hazards in areas designated by local government pursuant to 76-3-504, MCA.

(2) Rules adopted under this subchapter may not be construed as part of the state building code provided in 50-60-203, MCA, and may only be enforced as provided in Title 76, chapter 3, part 5.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE III PREMISES IDENTIFICATION (1) The address of the building shall be plainly visible and legible from the building's primary access road adjacent to the property.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE IV SMOKE DETECTION (1) All habitable structures shall have smoke alarms installed that meet or exceed the provisions for smoke detection and notification found in either the latest adopted edition of the IRC or the IBC, whichever applies to the type of structure.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE V ROOF AREAS (1) Roof coverings shall have at least a Class B roof assembly or an approved noncombustible roof covering. If the profile of the covering is such that a space is present between the covering and the roof decking, the space at the eave ends shall be fire-stopped to prevent the entry of flames or embers; or have one layer of 72-pound mineral-surfaced, nonperforated cap sheet, complying with ASTM D 3909, and installed over the combustible decking.

(2) When roof valleys are present, valley flashing shall consist of not less than 0.019-inch (26-gauge galvanized sheet) corrosion-resistant metal installed over a minimum three-foot wide underlayment of one layer of 72-pound mineral-surfaced, nonperforated cap sheet, complying with ASTM D 3909, and installed over the entire running length of the valley.

(3) Eaves, soffits, and fascias that are combustible shall be enclosed with solid materials with a minimum thickness of 3/4 inch. Rafter tails shall not be left exposed, unless constructed of heavy timber materials.

(4) If a structure is not located in a designated WUI, the roof assemblies listed in this rule shall comply with the IRC.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE VI CHIMNEYS AND FLUES (1) An approved spark arrester constructed of a minimum 12-gauge welded-wire or woven-wire mesh, with openings not exceeding 1/2 inch shall be installed on every fireplace and wood stove chimney and flue.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE VII GUTTERS AND DOWNSPOUTS (1) Gutters and downspouts shall be constructed of noncombustible materials and shall prevent the accumulation of leaves and debris by an approved method.

- (2) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE VIII EXTERIOR AREAS (1) In structures where the window to exterior wall area exceeds 20 percent (i.e., more than 20 percent of all exterior wall areas is comprised of exterior windows or window walls), the exterior windows, window walls, glazed doors, glazing within exterior doors, and skylights shall be tempered glass, multilayered glazed panels, glass block, or have a fire protection rating of not less than 20 minutes.

(2) Exterior doors shall be of approved noncombustible construction and materials, solid core wood not less than 1 3/4 inches thick, or have a fire protection rating of not less than 20 minutes. Vehicle access doors shall be constructed of ignition-resistant building materials.

(3) Exterior walls of buildings or structures shall extend from the top of the foundation to the underside of the roof sheathing and shall be constructed with one of the following methods:

(a) materials approved for a minimum of one-hour fire-resistance-rated construction on the exterior side;

(b) noncombustible materials;

(c) heavy timber or log wall construction;

(d) wood that is labeled for exterior use and is fire-retardant-treated on the exterior side; or

(e) materials that are ignition-resistant on the exterior side.

(4) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE IX VENTS (1) Ventilation openings in vertical exterior walls, attics, foundations, or underfloor areas shall not exceed 144 square inches each. Attic ventilation openings shall not be located in soffits, eave overhangs, between rafters at eaves, or other overhang areas.

(a) Gable end and dormer vents shall be located at least ten feet from property lines.

(b) Underfloor ventilation openings shall be located as close to grade as practical.

(2) All such vents shall be covered with noncombustible corrosion-resistant mesh with openings not to exceed 1/4 inch or shall be designed and approved to prevent ember or flame penetration into the structure. Vents shall not be placed in walls that face heavy vegetative fuels.

(3) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE X UNENCLOSED UNDERFLOOR AREAS (1) All underfloor areas shall be enclosed to the ground in the same manner as required for exterior walls in [NEW RULE VIII], unless such unenclosed areas are protected with either one-hour fire-resistance-rated construction or heavy timber construction or fire-retardant-treated wood to the underside of all exposed floors and all exposed structural columns, beams, and supporting walls.

(2) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE XI ACCESSORY STRUCTURES (1) An accessory structure without a complete exterior wall system enclosing the area under the roof or above the floor that is attached to buildings with habitable spaces and projections (e.g., decks), shall be a minimum of one-hour fire-resistance-rated construction, heavy timber construction, or constructed of one of the following:

- (a) noncombustible materials;
- (b) fire-retardant-treated wood labeled for exterior use; or
- (c) ignition-resistant building materials.

(2) When an attached accessory structure is located so that any portion of the structure projects over a descending slope surface greater than ten percent, the area below the structure shall have all underfloor areas enclosed to within six inches of the ground, with exterior wall construction in accordance with [NEW RULE VIII].

(3) If a structure is not located in a designated WUI, this rule does not apply.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE XII STORAGE TANKS (1) Propane tanks and other flammable or combustible liquids storage shall be buried underground. If soil or subsoil conditions prohibit complete burial, then tanks shall be partially covered by at least one foot of earth, sand, or other noncombustible material.

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

(3) Structures not located in a designated WUI may have storage tanks installed above ground, so long as they conform to the NFPA 58 standard and be located at least 30 feet from any structure.

AUTH: 50-60-901, MCA

IMP: 76-3-504, MCA

NEW RULE XIII WATER SOURCES – PRIVATE WELLS (1) Structures served by a private well shall have the pump wired on a separate circuit or disconnect to allow the pump to remain energized if the main disconnect to the structure is disconnected or turned off.

AUTH: 50-60-901, MCA

IMP: 50-60-902, 76-3-504, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the department, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2050, or by e-mail to cwhite@mt.gov, and must be received no later than 5:00 p.m., June 1, 2010.

6. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.buildingcodes.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.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions. 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 or areas of law 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 sent or delivered to Dave Cook, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, faxed to the office at (406) 841-2050, e-mailed to dcook@mt.gov, or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on February 23, 2010, by electronic mail.

9. Colleen White, attorney, has been designated to preside over and conduct this hearing.

/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 April 19, 2010

BEFORE THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of	)	AMENDED NOTICE OF PROPOSED
ARM 32.8.101 and 32.8.202	)	AMENDMENT
pertaining to grade A pasteurized milk)	
and time from processing that fluid)	
milk may be sold for public)	
consumption)	

TO: All Concerned Persons

1. On November 12, 2009, the Department of Livestock published MAR Notice No. 32-9-200 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2095 of the 2009 Montana Administrative Register, Issue Number 21.

2. The Department of Livestock 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 Livestock no later than 5:00 p.m. on May 28, 2010, to advise us of the nature of the accommodation that you need. Please contact Steve Merritt, Public Information Officer, Department of Livestock, 301 N. Roberts St., Room 235, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9431; TTD number: 1 (800) 253-4091; fax: (406) 444-2877; e-mail: smerritt@mt.gov.

3. This amended notice is necessary because the formal evidentiary hearing process has not been completed. The original Notice No. 32-9-200 stated the department would use a combined two-part hearing under the requirements of Mont. Code Ann. § 2-4-302 and 315, and the notice announced the dates and times of the hearings. The first part of the combined hearing allowed for submission of evidence by designated parties in a formal setting, presided over by a hearings examiner, and governed by rules of evidence. The second part of the combined hearing, presided over by the board, presented an opportunity for members of the public to appear and present testimony regarding the proposed amendments as found in the petition submitted by Core-Mark. The second part has been completed. The first part has not been completed. After the first part has been completed, which includes the presentation of written finding of fact and conclusions of law, and legal briefing by the designated parties, the hearing examiner will be presenting to the board, a proposed decision based on the testimony and evidence received at that first part of the hearing. As noted in the original published notice on November 12, 2009, MAR Notice No. 32-9-200 at page 2095 of the 2009 Montana Administrative Register, Issue Number 21, the Board of Livestock will consider equally all testimony and comment received in both parts of the hearing, and the official record will contain all testimony and comment received in both parts of the hearing.

4. The rules as proposed to be amended remain the same. The reasons for the proposed amendment remain the same as published in November 12, 2009, MAR Notice No. 32-9-200 at page 2095 of the 2009 Montana Administrative Register, Issue Number 21.

5. The public comment period has expired.

/s/ George H. Harris
George H. Harris
Rule Reviewer

/s/ Christian Mackay
Christian Mackay
Executive Officer
Montana Department of Livestock

Certified to the Secretary of State April 19, 2010.

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

In the matter of the repeal of ARM	)	NOTICE OF PUBLIC HEARING
36.11.111 and the amendment of ARM	)	ON PROPOSED REPEAL AND
36.11.450 pertaining to the export of	)	AMENDMENT
timber harvested in the state and the)	
maximum size of nonadvertised timber)	
permits)	

To: All Concerned Persons

1. The Department of Natural Resources and Conservation will hold a public hearing at 1:00 p.m. on May 26, 2010, in the DNRC Southwestern Land Office conference room, 1401 27th Avenue, Missoula, Montana, to consider the repeal and amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. on May 12, 2010, to advise the department of the nature of the accommodation that you need. Please contact Shawn Thomas, Forest Management Bureau, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4306; fax (406) 542-4242; e-mail sthomas@mt.gov.

3. The department proposes to repeal the following rule:

36.11.111 AGREEMENT NOT TO EXPORT STATE LOGS is found on page 36-1412 of the Administrative Rules of Montana.

AUTH: 77-5-201, MCA
IMP: 77-5-201, MCA

REASONABLE NECESSITY: The repeal of ARM 36.11.111 is reasonably necessary because Section 491 of the Forest Resources Conservation and Shortage Relief Act of 1990 (subsequently codified as 16 USC §620c), which had required the DNRC to adopt a rule prohibiting the export of timber produced on state lands, was ruled unconstitutional. The Ninth Circuit Court of Appeals, in *Board of Natural Resources of Washington v. Brown*, 992 F. 2d 937 (9th Circuit 1993) ruled that export-prohibition provisions of Section 491 of the Federal Act, violated the 10th Amendment to the United States Constitution because it unlawfully compelled the states to enact or administer a federal regulatory program. The Ninth Circuit Court of Appeals ruled that 16 USC §§620c(d)(2) and (d)(3)(a) were unconstitutional.

DNRC wishes to conform the administrative rules to the federal ruling by eliminating the requirement that purchasers of state timber sales and state timber permits sign a

nonexport agreement, as there is nothing in Montana statute or DNRC's timber contract policy that forbids it.

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

36.11.450 TIMBER PERMITS (1) The department shall review and issue timber permits within the time frame specified by 77-5-212(5) and (6), MCA.

(2) ~~(4)~~ Under the authority of 77-5-212, MCA, the department may issue commercial timber permits at commercial rates, and without advertising, for sales that do not exceed 100,000 board feet of timber, or, in cases of emergency salvage, do not exceed ~~200,000~~ 500,000 board feet of timber.

(a) The department shall not be required to obtain approval from the Board of Land Commissioners to issue specific timber permits.

(b) The board shall retain administrative oversight of the timber permit program.

(c) Permits will not be subject to categorical exclusions except as stated in ARM 36.11.447.

AUTH: 77-1-202, 7-1-209, 77-5-201, 77-5-204, 77-5-212, MCA

IMP: 77-5-116, 77-5-204, 77-5-206, 77-5-207, 77-5-212, MCA

REASONABLE NECESSITY: The amendment is reasonably necessary because the 2009 Montana Legislature passed HB78 to revise 77-5-212, MCA, increasing the allowable size limit of emergency salvage timber permits from 200,000 board feet to 500,000 board feet. The amendments also clarify the time constraints placed by 77-5-212(5) and (6), MCA, which were the original impetus for adopting ARM 36.11.450, as it is difficult for the DNRC to meet that timeline when bringing each timber permit before the Land Board.

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 Shawn Thomas, Department of Natural Resources and Conservation, 2705 Spurgin Road, Missoula, MT 59804-3199; telephone (406) 542-4306; fax (406) 542-4242; or e-mailed to slyngholm@mt.gov, and must be received no later than 5:00 p.m. on May 28, 2010.

6. Shawn Thomas, Department of Natural Resources and Conservation Forestry Division, 2705 Spurgin Road, Missoula, MT 59804 has been designated to preside over and conduct the public hearing.

7. An electronic copy of this Notice of Public Hearing on Proposed Repeal and Amendment is available through the department's web site at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed Repeal and Amendment 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.

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 that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The bill sponsor was contacted by e-mail on April 9, 2010.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

/s/ Mary Sexton
MARY SEXTON
Director
Natural Resources and Conservation

/s/ Mark Phares
MARK PHARES
Rule Reviewer

Certified to the Secretary of State on April 19, 2010.

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

In the matter of the amendment)
of ARM 37.40.307 and 37.40.361)
pertaining to Medicaid nursing facility)
reimbursement)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT

TO: All Concerned Persons

1. On May 19, 2010, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 10, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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:

37.40.307 NURSING FACILITY REIMBURSEMENT (1) remains the same.

(2) Effective July 1, 2001, and in subsequent rate years, nursing facilities will be reimbursed using a price based reimbursement methodology. The rate for each facility will be determined using the operating component defined in (2)(a) and the direct resident care component defined in (2)(b):

(a) through (c) remain the same.

(d) The total payment rate available for the period July 1, ~~2009~~ 2010 through June 30, ~~2010~~ 2011 will be the rate as computed in (2), plus any additional amount computed in ARM 37.40.311 and 37.40.361.

(3) Providers who, as of July 1 of the rate year, have not filed with the department a cost report covering a period of at least six months participation in the Medicaid program in a newly constructed facility shall have a rate set at the statewide median price as computed on July 1, ~~2009~~ 2010. Following a change in provider as defined in ARM 37.40.325, the per diem rate for the new provider shall be set at the previous provider's rate, as if no change in provider had occurred.

(4) through (12) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-111, 53-6-113, MCA

37.40.361 DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE REPORTING/ADDITIONAL PAYMENTS INCLUDING LUMP SUM PAYMENTS FOR DIRECT CARE AND ANCILLARY SERVICES WORKERS' WAGE AND BENEFIT INCREASES (1) Effective for the period July 1, ~~2009~~ 2010 and for the six

months thereafter, nursing facilities must report to the department actual hourly wage and benefit rates paid for all direct care and ancillary services workers or the lump sum payment amounts for all direct care and ancillary services workers that will receive the benefit of the increased funds. The reported data shall be used by the department for the purpose of comparing types and rates of payment for comparable services and tracking distribution of direct care wage funds to designated workers.

(2) The department will pay Medicaid certified nursing care facilities located in Montana that submit an approved request to the department a lump sum payment in addition to the amount paid as provided in ARM 37.40.307 and 37.40.311 to their computed Medicaid payment rate to be used only for wage and benefit increases or lump sum payments for direct care or ancillary services workers in nursing facilities.

(a) The department will determine the lump sum payments, twice a year commencing July 1, ~~2009~~ 2010, and again in six months from that date as a pro rata share of appropriated funds allocated for increases in direct care and ancillary services workers' wages and benefits or lump sum payments to direct care and ancillary services workers.

(b) through (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.40.307 and 37.40.361 pertaining to Medicaid nursing facility reimbursement. The proposed amendments are necessary to implement nursing facility reimbursement for state fiscal year 2011. The department does not have available, at this time, all of the information that will be necessary in order to establish final payment rates for nursing facility providers effective July 1, 2010.

The department will provide rate sheets to all providers in advance of the rule hearing, for verification purposes and in order to facilitate comments, when final case mix information and Medicaid utilization data and other details necessary to compute accurate reimbursement rates become available. These sheets will distribute the funding available in order to meet the department goals for a price based system of reimbursement.

As of April 19, 2010, the date this proposed rule amendment is filed with the Secretary of State, there is a projected Montana general fund budget deficit as that term is defined in 17-7-140(3), MCA for state fiscal year 2011. The Governor has instructed the department and other agencies of state government to implement a general fund spending reduction plan. As part of the department's spending

reduction plan appropriated provider rate increases for state fiscal year 2011 will not be implemented.

Funding will continue to be available from House Bill (HB 645), enacted as Chapter 489, Laws of Montana 2009, to provide for a one-time direct care worker wage increase for nursing facility providers. This direct care wage increase is for direct care and auxiliary staff for the 2011 fiscal year only and continues the funding that was available in fiscal year 2010 for this purpose.

The Legislature continued approval for the use of local county matching funds as a source of additional revenue for nursing facility providers through the intergovernmental fund transfer program in order to maintain access to, and the quality of, nursing facility services for fiscal year 2011.

For rate year 2011 (July 1, 2010 - June 30, 2011) the nursing facility per diem rate will be computed as follows:

1. The Medicaid per diem rates will include two components. The operating component (that includes both operating and capital costs combined), is the same rate for all nursing facilities and represents 80% of the overall price. The nursing component will be adjusted for individual nursing facility acuity and is 20% of the overall price.
2. Medicaid per diem rates will be established annually each July 1st.
3. The minimum data set (MDS) case mix assessment data will be used in the computation of each facility's resident acuity. Each nursing facility's case mix index (CMI) will be calculated quarterly based upon a set point in time, using the most recent annual or quarterly MDS information. Nonclassifiable MDS assessments will be excluded from the computation of CMI's during the transition period. Medicaid case mix for annual rate setting will be based on the most recent four quarter average of Medicaid CMI's for each nursing facility.

Provider rate increase

Funding from HB 645 will not be available to provide for a rate increase for nursing facility providers. Rates will be maintained at the 2010 funding level, with changes being made for case mix using updated MDS data and updated Medicaid utilization information for all nursing facilities.

Direct Care Wages

Total funding of approximately \$5,729,330 will be available to provide for a one-time direct care worker wage increase. This direct care wage increase is for direct care and auxiliary staff for the 2011 fiscal year only. This funding will be allocated to facilities using the methodology that was adopted in 2010, as an add-on to the regular per diem rate, and can only be used to provide for worker wage increases.

The department will identify the reporting form that will be used by providers in order to receive this additional funding for wages. This form will identify which workers will receive these funds, if these funds will be distributed in the form of a stipend or a bonus, or in the form of a wage increase. These funds are one time only and as such will not be an ongoing reimbursement source after fiscal year 2011. Providers will need to be aware that any funds put into their wage structure may not be available in future years, after this biennium.

Estimated financial /budget impacts

These proposed rule changes are necessary to implement nursing facility reimbursement for state fiscal year 2011.

The total state and federal funding available for fiscal year 2011 is currently projected at \$153,857,508 which is comprised of \$17,077,776 in state special revenue, \$32,439,604 in state general funds and \$104,340,128 in federal funds. This funding includes \$2,981,100 of total funds, \$888,368 of state general funds and \$2,092,732 of federal funds appropriated for the 2% provider rate increases that was funded in 2010. Additional funding of lump sum payments to providers for direct care workers, and auxiliary staff of \$1,705,049 of general funds and \$4,024,281 in federal funds for a total appropriation of \$5,729,330 for the nursing facility program is fiscal year 2011.

The estimated total funding available for fiscal year 2011 for nursing facility reimbursement is estimated at approximately \$186,979,908 of combined state funds and federal funds, including \$33,122,400 in patient contributions. These numbers do not include at-risk provider funds. Anticipated patient days for state fiscal year 2011 are 1,119,000 using estimates of caseload adopted by the Legislature.

The estimated total funding impact of the one-time payments to "at risk" nonstate governmental providers and other nursing facilities not determined to be "at risk", has been appropriated at \$5,565,935 in total funds of which \$1,843,131 comes from state special revenue funds and approximately \$3,722,804 from federal funding sources.

5. The department intends the proposed rule changes to be applied effective July 1, 2010. This date will comply with legislative directives for funding increases for nursing facilities.

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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

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/ John Koch
Rule Reviewer

/s/ Ann Whiting Sorrell
Anna Whiting Sorrell, Director
Public Health and Human Services

Certified to the Secretary of State April 19, 2010.

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 37.86.805, 37.86.1506,	)	PROPOSED AMENDMENT
37.86.2105, 37.86.2207, 37.86.2224,)	
37.86.2405, 37.86.2505, and)	
37.86.2605 pertaining to Medicaid)	
reimbursement for hearing aid)	
services, outpatient drugs, home)	
infusion therapy services,)	
eyeglasses, early and periodic)	
screening, diagnostic and treatment)	
services, comprehensive school and)	
community treatment, transportation)	
and per diem, specialized)	
nonemergency medical)	
transportation, and ambulance)	
services)	

TO: All Concerned Persons

1. On May 20, 2010, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated 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 May 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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:

37.86.805 HEARING AID SERVICES, REIMBURSEMENT (1) The department will pay the lowest of the following for covered hearing aid services and items:

(a) remains the same.

(b) the amount specified for the particular service or item in the department's fee schedule. The department adopts and incorporates by reference the

department's Hearing Aid Fee Schedule dated July ~~2009~~ 2010. A copy of the department's fee schedule is posted at <http://medicaidprovider.hhs.mt.gov> and may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1401 East Lockey, P.O. Box 202951, Helena, MT 59620-2951; or

(c) and (2) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.1506 HOME INFUSION THERAPY SERVICES, REIMBURSEMENT

(1) Subject to the requirements of these rules, the Montana Medicaid program will pay for home infusion therapy services on a fee basis, as specified in the department's home infusion therapy services fee schedule. The department adopts and incorporates by reference the Home Infusion Therapy Services Fee Schedule dated July ~~2009~~ 2010. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the Home Infusion Therapy Services Fee Schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The specified fees are on a per day or a per dose basis as specified in the fee schedule. The fees are bundled fees which cover all home infusion therapy services as defined in ARM 37.86.1501.

(2) through (4)(c) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

37.86.2105 EYEGLASSES, REIMBURSEMENT (1) through (2)(a)(ii) remain the same.

(3) The department adopts and incorporates by reference the department's Eyeglasses Fee Schedule effective July ~~2009~~ 2010. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's fee schedule may also be obtained from Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2207 EARLY AND PERIODIC SCREENING, DIAGNOSTIC AND TREATMENT (EPSDT) SERVICES, REIMBURSEMENT (1) through (1)(d) remain the same.

(2) Reimbursement for nutrition and private duty nursing services is specified in the department's fee schedule. The department adopts and incorporates by reference the department's private duty nursing services EPSDT Fee Schedule dated July ~~2009~~ 2010 and the nutrition EPSDT Fee Schedule dated July ~~2009~~ 2010.

The fee schedules are posted at <http://medicaidprovider.hhs.mt.gov>.

Reimbursement for outpatient chemical dependency treatment is outlined in ARM 37.27.912. A copy of the Nutrition and Private Duty Nursing Services Fee Schedules may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (8) remain the same.

(9) Reimbursements for school-based health related services are specified in the School-Based Health Service Fee Schedule dated October ~~2009~~ 2010, which is adopted and incorporated by reference. A copy of the School-Based Health Service Fee Schedule is posted at <http://medicaidprovider.hhs.mt.gov>. Rates are adjusted to reimburse these services at the federal matching assistance percentage (FMAP) rate.

(10) and (11) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2224 EARLY AND PERIODIC SCREENING, DIAGNOSTIC, AND TREATMENT SERVICE (EPSDT), COMPREHENSIVE SCHOOL AND COMMUNITY TREATMENT (1) Comprehensive school and community treatment (CSCT) means a comprehensive, planned course of outpatient treatment provided in the school and community to a child or adolescent with a serious emotional disturbance (SED), as defined in ARM ~~37.86.3702(2)~~ 37.87.303. A CSCT program may be operated by a licensed mental health center with a CSCT endorsement. The criteria for a mental health center's CSCT endorsement are found in ARM 37.106.1955.

(2) and (3) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2405 TRANSPORTATION AND PER DIEM, REIMBURSEMENT

(1) through (1)(b) remain the same.

(2) The department adopts and incorporates by reference the department's Montana Medicaid Fee Schedule, Personal and Commercial Transportation dated July ~~2009~~ 2010 that sets forth the reimbursement rates for transportation, per diem, and other Medicaid services. A copy of the department's fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the fee schedule may also be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (5) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2505 SPECIALIZED NONEMERGENCY MEDICAL TRANSPORTATION, REIMBURSEMENT (1) through (1)(b) remain the same.

(2) The department adopts and incorporates by reference the department's fee schedule dated July 2009 2010 which that sets forth the reimbursement rates for specialized nonemergency medical transportation services and other Medicaid services. A copy of the fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

37.86.2605 AMBULANCE SERVICES, REIMBURSEMENT (1) through (1)(b) remain the same.

(2) The department adopts and incorporates by reference the Montana Medicaid Fee Schedule, Ambulance dated July 2009 2010. A copy of the fee schedule is posted at the Montana Medicaid provider web site at <http://medicaidprovider.hhs.mt.gov>. A copy of the department's fee schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(3) through (4) remain the same.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-6-101, 53-6-113, 53-6-141, MCA

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.805, 37.86.1506, 37.86.2105, 37.86.2207, 37.86.2224, 37.86.2405, 37.86.2505, and 37.86.2605 pertaining to Medicaid reimbursement for hearing aid services, outpatient drugs, home infusion therapy services, eyeglasses, early and periodic screening, diagnostic and treatment services, comprehensive school and community treatment, transportation and per diem, specialized nonemergency medical transportation, and ambulance services. The proposed rule amendments are necessary to update the department's Medicaid nonresource-based fee schedules, update the appropriate dispensing fees for pharmacy providers and to appropriately associate ARM 37.87.303 definition of a serious emotional disturbance.

ARM 37.86.805, 37.86.1506, 37.86.2105, 37.86.2207, 37.86.2405, 37.86.2505, and 37.86.2605

The proposed amendment to these rules adopts the fee schedule dated July 2010. The proposed amendment to ARM 37.86.2207(9) changes the fee schedule date from October 2009 to October 2010 for school-based services. The proposed amendment to the fee schedules would only change the reference date to reflect the

current year. There are no rate changes and no changes, other than dates, are proposed at this time.

As of April 19, 2010, the date this proposed rule amendment is filed with the Secretary of State, there is a projected Montana general fund budget deficit as that term is defined in 17-7-140(3), MCA for state fiscal year 2011. The Governor has instructed the department and other agencies of state government to implement a general fund spending reduction plan. As part of the department's spending reduction plan appropriated provider rate increases for state fiscal year 2011 will not be implemented.

ARM 37.86.2224

The amendment to ARM 37.86.2224 updates the reference serious emotional disturbance (SED) definition reference from ARM 37.86.3702(2) to 37.87.303(1).

Fiscal Impact

The amendments to the proposed rules are expected to have no fiscal impact to the department and no material effects on Medicaid recipients or Medicaid providers. Fee schedule dates are being changed in rule to properly refer to the most recent fee schedule available.

Number of persons effected:

The proposed rule changes could affect an estimated 81,920 Medicaid recipients and the following number of providers listed by program: 48 hearing aid providers; 265 pharmacy providers; 11 home infusion therapy providers; 169 optometric providers; 12 private duty nursing providers; 7 nutrition providers; 19 EPSDT mental health providers; 229 school-based services providers; 17 transportation providers; 107 ambulance providers; and 262 inpatient hospital providers.

5. The department intends the proposed rule amendments to ARM 37.86.805, 37.86.1506, 37.86.2105, 37.86.2207(2), 37.86.2224, 37.86.2405, 37.86.2505, and 37.86.2605 be applied effective July 1, 2010. The proposed change to ARM 37.86.2207(9) will be applied effective October 1, 2010.

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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 19, 2010.

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 37.86.2801, 37.86.2803,	)	PROPOSED AMENDMENT AND
37.86.2806, 37.86.2820, 37.86.2901,	)	REPEAL
37.86.2902, 37.86.2903, 37.86.2904,)	
37.86.2905, 37.86.2907, 37.86.2912,)	
37.86.2916, 37.86.2918, 37.86.2920,)	
37.86.2921, 37.86.2925, 37.86.2928,)	
and 37.86.2947 and repeal of ARM)	
37.86.2810 and 37.86.2910)	
pertaining to Medicaid inpatient and)	
outpatient hospital services)	

TO: All Concerned Persons

1. On May 19, 2010, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 10, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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:

37.86.2801 ALL HOSPITAL REIMBURSEMENT, GENERAL

(1) Reimbursement for inpatient hospital services is set forth in ARM 37.86.2806, 37.86.2905, 37.86.2907, ~~37.86.2910~~, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2943, and 37.86.2947. Reimbursement for outpatient hospital services is set forth in ARM 37.86.3005, 37.86.3006, 37.86.3007, 37.86.3009, 37.86.3014, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3022, 37.86.3025, 37.86.3037, and 37.86.3109. Cost of hospital services will be determined for inpatient and outpatient care separately. Administratively necessary days are not a benefit of the Montana Medicaid program.

(2) The department may require providers of inpatient or outpatient hospital services to obtain authorization from the department or its designated review organization either prior to provision of services, prior to admission, or prior to payment.

(3) Medicaid reimbursement shall not be made or shall be reduced unless the provider has obtained authorization from the department or its designated review organization prior to providing any of the following services:

(a) inpatient psychiatric services provided in an acute care psychiatric hospital, acute care general hospital or a distinct part psychiatric unit of an acute care general hospital, and outpatient partial hospitalization as required by ARM 37.88.101.;

(i) if prior authorization is not obtained, the claim will be denied;

(ii) Medicare crossover claims do not need prior authorization; and

(iii) third party liability claims must be prior authorized.

~~(b) except as provided in (4) all inpatient services provided in preferred hospitals located more than 100 miles outside the borders of the state of Montana;~~

~~(c) (b) services related to organ transplantations covered under ARM 37.86.4701 and 37.86.4705; or;~~

(i) if prior authorization is not obtained, the claim will be denied;

(ii) Medicare crossover claims must be prior authorized; and

(iii) third party liability claims must be prior authorized.

~~(d) outpatient partial hospitalization, as required by ARM 37.88.101.~~

~~(e) (c) any other services for specific diagnosis or procedures that require all Medicaid providers to obtain prior authorization; or;~~

(i) if prior authorization is not obtained, the claim will be denied;

(ii) Medicare crossover claims must be prior authorized; and

(iii) third party liability claims must be prior authorized.

(f) (d) inpatient services in facilities designated as a Center of Excellence and all out-of-state facilities:

(i) if prior authorization is not obtained, reimbursement of the inpatient claim will be 50% of the amount calculated in (1); except in claims subject to (3)(a), (b), and (c) will be denied;

(ii) Medicare inpatient crossover claims do not need prior authorization except claims subject to (3)(b) and (c); and

(iii) inpatient third party liability claims must be prior authorized;

(A) if prior authorization is not obtained, reimbursement of the inpatient third party liability claim will be 50% of the amount calculated in (1); except claims subject to (3)(a), (b), and (c) will be denied.

~~(4) Upon the request of a preferred hospital, the department may grant retroactive authorization for the provision of the hospital's services under the following circumstances only when:~~

~~(a) remains the same.~~

~~(b) the hospital is retroactively enrolled as a Montana Medicaid provider, and the enrollment includes the dates of service for which authorization is requested;~~

~~(c) (b) the hospital can document that at the time of admission it did not know, or have any basis to assume, that the patient client was a Montana Medicaid client eligible; or~~

~~(d) (c) the hospital can document that the admission was an emergency admit medically necessary for purposes of emergency stabilization or stabilization for transfer; The hospital must call for authorization within two working days (Monday through Friday) of the admission.~~

(d) interim claims in a PPS hospital equal to or greater than 30 days of continuous inpatient services at the same facility; or

(e) the hospital is retroactively enrolled as a Montana Medicaid provider, and the enrollment includes the dates of service for which authorization is requested provided the hospital's retroactive enrollment is completed allowing time for the hospital to obtain prior authorization and to submit a clean claim within timely filing deadlines in accordance with ARM 37.85.406.

(5) For purposes of (4)(a), (b), and (c) the hospital must call for authorization within three working days (Monday through Friday) of the admission or the date it gained knowledge of the client's Medicaid eligibility and must meet the requirements for timely filing as specified in ARM 37.85.406:

(a) the basis for the request must be documented in the client's hospital record; and

(b) providers seeking retroactive authorization for adult mental health claims must submit their requests in writing.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2803 ALL HOSPITAL REIMBURSEMENT, COST REPORTING

(1) Allowable costs will be determined in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants. Such definition of allowable costs is further defined in accordance with the Medicare Provider Reimbursement Manual, CMS Publication 15 Transmittal 47 21 last updated ~~May 2007~~ January 2010, subject to the exceptions and limitations provided in the department's administrative rules. The department adopts and incorporates by reference Pub. 15, which is a manual published by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), which provides guidelines and policies to implement Medicare regulations which set forth principles for determining the reasonable cost of provider services furnished under the Health Insurance for Aged Act of 1965, as amended. A copy of Pub. 15 may be obtained through the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

~~(a) For cost report periods ending on or after July 1, 2003, for each hospital which is not a sole community hospital, critical access hospital or exempt hospital as defined in ARM 37.86.2901, reimbursement for reasonable costs of outpatient hospital services, other than the capital-related costs of such services, shall be limited to allowable costs, as determined in accordance with (1).~~

~~(b) For cost report periods ending on or after July 1, 2003, for each hospital which is a sole community hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of outpatient hospital services, other than the capital-related~~

~~costs of such services, shall be limited to allowable costs, as determined in accordance with (1).~~

~~(c) (a)~~ For cost report periods ending on or after January 1, 2006, for each hospital which is a critical access ~~or exempt~~ hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient and outpatient hospital services shall be limited to 101% of allowable costs, as determined in accordance with (1).

~~(d) For cost report periods ending on or after January 1, 2007 through September 30, 2008, for each hospital which is a preferred out-of-state hospital, as defined in ARM 37.86.2901, reimbursement for reasonable costs of inpatient hospital services shall be limited to 100% of allowable costs, as determined in~~

(2) All hospitals reimbursed under ARM 37.86.2806, 37.86.2905, 37.86.2907, ~~37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2943, 37.86.2947, 37.86.3005, 37.86.3006, 37.86.3007, 37.86.3009, 37.86.3014, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3022, 37.86.3025, 37.86.3037, or 37.86.3109~~ must submit, as provided in (3), an annual Medicare cost report in which costs have been allocated to the Medicaid program as they relate to charges. The facility shall maintain appropriate accounting records which will enable the facility to fully complete the cost report.

(3) All hospitals reimbursed under ARM 37.86.2806, 37.86.2905, 37.86.2907, ~~37.86.2910, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2924, 37.86.2925, 37.86.2928, 37.86.2943, 37.86.2947, 37.86.3005, 37.86.3006, 37.86.3007, 37.86.3009, 37.86.3014, 37.86.3016, 37.86.3018, 37.86.3020, 37.86.3022, 37.86.3025, 37.86.3037, or 37.86.3109~~ or must file the cost report with the Montana Medicare intermediary and the department on or before the last day of the fifth calendar month following the close of the period covered by the report. For fiscal periods ending on a day other than the last day of the month, cost reports are due 150 days after the last day of the cost reporting period.

(a) Extensions of the due date for filing a cost report may be granted by the intermediary only when a provider's operations are significantly adversely affected due to extraordinary circumstances over which the provider has no control, ~~such as flood or fire.~~

~~(b) In the event a provider does not file a cost report within the time limit or files an incomplete cost report, the provider's total reimbursement will be withheld. All amounts so withheld will be payable to the provider upon submission of a complete and accurate cost report.~~

~~(4) For distinct part rehabilitation units identified in ARM 37.86.2901 and 37.86.2916, the base year is the facility's cost report for the first cost reporting period ending after June 30, 1985 that both covers 12 months and includes Montana Medicaid inpatient hospital costs. Exceptions will be granted only as permitted by the applicable provisions of 42 CFR 413.30 or 413.40 (2002).~~

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2806 COST-BASED HOSPITAL, GENERAL REIMBURSEMENT

(1) ~~Cost-based reimbursement shall be applied as follows: is applicable to exempt hospitals, preferred out-of-state hospitals with dates of admission from January 1, 2007 through September 30, 2008, and critical access hospitals (CAH).~~

(2) ~~(a) Exempt hospitals, preferred out-of-state hospitals, and Critical access hospital (CAH) interim reimbursement is based on a hospital specific Medicaid inpatient cost-to-charge ratio (CCR), not to exceed 100%.~~

(3) ~~(b) CAH and exempt hospital final reimbursement is for reasonable costs of hospital services limited to 101% of allowable costs, as determined in accordance with ARM 37.86.2803(1).~~

~~(a) Preferred out-of-state hospital final reimbursement is for reasonable costs of hospital services limited to 100% of allowable costs, as determined in accordance with ARM 37.86.2803(1). Preferred hospitals are reimbursed on a cost basis for dates of admission from January 1, 2007 until September 30, 2008.~~

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

~~(6) (4) Certified registered nurse anesthetist (CRNA) reimbursement for exempt and CAHs hospitals is as determined in accordance with ARM 37.86.2924.~~

~~(5) Cost-based hospitals may be eligible to receive a disproportionate share hospital (DSH) payment in accordance with ARM 37.86.2925.~~

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

~~(7) Cost-based hospital claims for clients with partial eligibility shall be billed from the first date of Medicaid eligibility.~~

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-113, MCA

37.86.2820 DESK REVIEWS, OVERPAYMENTS, AND UNDERPAYMENTS

(1) remains the same.

(2) For cost reporting purposes where the department finds that an overpayment has occurred, the department will notify the provider of the overpayment.

(a) The provider will have 60 days from the date of the initial notification to repay the amount of the overpayment or to have an agreed upon repayment schedule. If the provider does not repay the whole overpayment within 60 days or defaults on a payment schedule, the department will ~~make deductions from~~ withhold any future payments the state of Montana makes to the provider. Recovery will be undertaken even though the provider disputes in whole or part the department's determination of the overpayment and requests a fair hearing.

(b) through (4) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2901 INPATIENT HOSPITAL SERVICES, DEFINITIONS (1) through (1)(b) remain the same.

(2) "Administratively necessary days" or "inappropriate level of care services" means those services for which alternative placement of a ~~patient~~ client is planned

and/or effected and for which there is no medical necessity for acute level inpatient hospital care.

(3) "All patient refined diagnosis related groups (APR-DRGs)" means DRGs that classify each inpatient case based on claim information such as diagnosis, procedures performed, ~~patient~~ client age, ~~patient~~ client sex, and discharge status.

(4) "Bad debt" means inpatient and outpatient hospital services provided in which full payment is not received from the ~~patient~~ client or from a third party payor, for which the provider expected payment and the persons are unable or unwilling to pay their bill. Bad debts may be for services provided to ~~patients~~ clients who have no health insurance or ~~patients~~ clients who are underinsured and are net of payments (the amount that remains after payment) made toward these services. For the purpose of uncompensated care, bad debt is measured on the basis of revenue forgone, at full established rates, and bad debt does not include either provider discounts or Medicare bad debt.

(5) and (6) remain the same.

(7) "Capital related cost" means a cost incurred in the purchase of land, buildings, construction, and equipment as provided in 42 CFR 413.130.

~~(7)~~ (8) "Center of Excellence" means a hospital specifically designated by the department as being able to provide a higher level multi-specialty of comprehensive care ~~that is not available elsewhere~~ and meets the criteria in ARM 37.86.2947(3).

~~(8)~~ (9) "Charity care" means inpatient and outpatient hospital services in which hospital policies determine the ~~patient~~ client is unable to pay and the hospital did not expect to receive full reimbursement. Charity care results from a provider's policy to provide health care services free of charge (or where only partial payment is expected) to individuals who meet certain financial criteria. For the purpose of uncompensated care, charity care is measured on the basis of revenue forgone, at full established rates. Charity care does not include contractual write-offs.

(10) "Clinical trials" means trials that are directly funded or supported by centers or cooperating groups funded by the National Institutes of Health (NIH), Center for Disease Control (CDC), Agency for Healthcare Research and Quality (AHRQ), Center for Medicare and Medicaid Services (CMS), Department of Defense (DOD), or the Veterans Administration (VA).

~~(9)~~ (11) "Cost-based hospital" means a licensed acute care hospital that is reimbursed on the basis of allowable costs.

~~(10)~~ (12) "Cost outlier" means an additional payment for unusually high cost cases that exceeds the cost outlier thresholds as set forth in ARM 37.86.2916.

(11) remains the same but is renumbered (13).

~~(12)~~ (14) "Direct nursing care" means the care given directly to the ~~patient~~ client which requires the skills and expertise of an RN or LPN.

~~(13)~~ (15) "Discharging hospital" means a hospital, other than a transferring hospital, that formally discharges an inpatient. Release of a ~~patient~~ client to another hospital, as described in ~~(34)~~ (39) or a leave of absence from the hospital will not be recognized as a discharge. A ~~patient~~ client who dies in the hospital is considered a discharge.

(16) "Disproportionate share hospital" means a hospital serving a disproportionate share of low income clients as defined in section 1923 of the Social Security Act.

(17) "Disproportionate share hospital specific uncompensated care" means the costs of inpatient and outpatient hospital services provided to clients who have no health insurance or source of third party coverage.

(14) remains the same but is renumbered (18).

~~(15)~~ (19) "Distinct part rehabilitation unit" means a rehabilitation unit of an acute care general hospital that meets the requirements in 42 CFR 412.25 and 412.29 ~~(1992)~~.

(20) "Experimental/investigational service" means a noncovered item or procedure considered experimental and/or investigational by the U.S. Department of Health and Human Services or any other appropriate federal agency.

~~(16) "Exempt hospital" means, for purposes of determining whether a hospital is exempt from the prospective payment system under ARM 37.86.2905, an acute care hospital that is located in a Montana county designated on or before July 1, 1991 as continuum code 8 or continuum code 9 by the United States Department of Agriculture under its rural-urban continuum codes for metro and nonmetro counties.~~

(17) remains the same but is renumbered (21).

~~(18)~~ (22) "Hospital resident" means a recipient client who is unable to be cared for in a setting other than the acute care hospital as provided in ARM 37.86.2921.

~~(19)~~ (23) "Inpatient" means a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. A person generally is considered an inpatient if formally admitted as an inpatient with an expectation that the patient client will remain more than 24 hours. The physician or other practitioner is responsible for deciding whether the patient client should be admitted as an inpatient. Inpatient hospital admissions are subject to retrospective review by the Medicaid peer review organization (PRO) department or the department's designated review organization to determine whether the inpatient admission was medically necessary for Medicaid payment purposes.

~~(20)~~ (24) "Inpatient hospital services" means services that are ordinarily furnished in an acute care hospital for the care and treatment of an inpatient under the direction of a physician, dentist, or other practitioner as permitted by federal law, and that are furnished in an institution that:

~~(a) is maintained primarily for the care and treatment of patients with disorders other than:~~

~~(i) tuberculosis; or~~

~~(ii) mental diseases, except as provided in (19)(d);~~

~~(b)~~ (a) is licensed or formally approved as an acute care hospital by the officially designated authority in the state where the institution is located;

~~(c)~~ (b) except as otherwise permitted by federal law, meets the requirements for participation in Medicare as a hospital and has in effect a utilization review plan that meets the requirements of 42 CFR 482.30; or

~~(d)~~ (c) provides inpatient psychiatric hospital services for individuals under age 21 pursuant to ARM ~~Title 37, chapter 88, subchapter 11~~ 37.88.1410.

(25) "Interim claim" in a prospective payment system (PPS) hospital means a claim being billed for an inpatient hospital stay equal to or exceeding 30 days at the same facility as referenced in ARM 37.86.2905.

(21) through (23) remain the same but are renumbered (26) through (28).

(29) "Out-of-state hospital" means a hospital located more than 100 miles beyond the Montana state border.

~~(24) "Preferred out-of-state hospital" means a hospital located more than 100 miles outside the borders of Montana that has signed a contract with the department to provide specialized services prior approved by the department. The classification of preferred out-of-state hospital is eliminated effective September 30, 2008.~~

(30) "Partial eligibility" means a client that is only eligible for Medicaid benefits during a portion of the inpatient hospital stay as specified in ARM 37.86.2918.

(31) "Prior authorization (PA)" means the approval process required before certain services are paid by Medicaid. Prior authorization must be obtained before providing the service.

~~(25) (32) "Prospective payment system (PPS) hospital" means a hospital reimbursed pursuant to the diagnosis related group (DRG) system. DRG hospitals are classified as such by the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR part 412 (2008).~~

~~(26) "Qualified rate adjustment payment" (QRA) means an additional payment as provided in ARM 37.86.2910 to a county owned, county operated, or partially county funded rural hospital in Montana where the hospital's most recently reported costs are greater than the reimbursement received from Montana Medicaid for inpatient care.~~

(27) through (29) remain the same but are renumbered (33) through (35).

~~(30) (36) "Sole community hospital" means a DRG reimbursed hospital classified as such by the Centers for Medicare and Medicaid Services (CMS) in accordance with 42 CFR 412.92(a) through (d) and/or hospitals with less than 51 beds.~~

(31) remains the same but is renumbered (37).

(38) "Third party liability (TPL)" means any entity that is, or may be, liable to pay all or part of the medical cost of care for a Medicaid eligible client.

~~(32) (39) "Transferring hospital" means a hospital that formally releases an inpatient client to another inpatient hospital or inpatient unit of a hospital.~~

(40) "Transplant" means to transfer either tissue or an organ from one body or body part to another as referenced in ARM 37.86.4701. A transplant may be either:

(a) "organ transplantation", the implantation of a living, viable, and functioning human organ for the purpose of maintaining all or a major part of that organ function in the client; or

(b) "tissue transplantation", the implantation of living, human tissue.

~~(33) (41) "Uncompensated care" means hospital services provided in which no payment is received from the patient client or from a third party payor. Uncompensated care includes charity care and bad debts.~~

(34) remains the same but is renumbered (42).

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, 53-6-149, MCA

37.86.2902 INPATIENT HOSPITAL SERVICES, REQUIREMENTS

- (1) and (2) remain the same.
- (3) Inpatient hospital services include:
 - (a) through (e) remain the same.
 - (f) other diagnostic or therapeutic items, or services provided in the hospital and not specifically excluded in ARM 37.85.207; and
 - (g) remains the same.
- (4) Clinical trials are limited to:
 - (a) Medicaid coverage of routine costs plus reasonable and necessary items and services used to diagnose and treat complications arising from participation in all qualifying clinical trials;
 - (b) trials that are directly funded or supported by centers or cooperating groups funded by the National Institutes of Health (NIH), Center for Disease Control (CDC), Agency for Healthcare Research and Quality (AHRQ), Department of Defense (DOD), or the Veterans Administration (VA); and
 - (c) clinical trial drugs, devices, and procedures are not reimbursable.
- ~~(4)~~ (5) Alcohol and drug detoxification services are limited to:
 - (a) detoxification services up to ~~four~~ seven days, except that more than ~~four~~ seven days may be covered if concurrently authorized by the department or the department's designated review organization and a hospital setting is required; or
 - (b) the department or the department's designated review organization determines that the ~~patient~~ client has a concomitant condition that must be treated in the inpatient hospital setting, and the alcohol and drug treatment is a necessary adjunct to the treatment of the concomitant condition.
- (5) remains the same but is renumbered (6).
- ~~(6)~~ (7) Inpatient hospital providers must comply with the applicable ~~portions~~ of conditions of participation for hospitals as authorized in 42 CFR 482.
- ~~(7)~~ (8) Acute care psychiatric hospitals must comply with 42 CFR 440.160, 42 CFR 441 subpart D, and the applicable ~~portions of~~ conditions of participation for hospitals as authorized in 42 CFR 482.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2903 INPATIENT HOSPITAL SERVICES, EXCLUSIONS

- (1) Inpatient hospital services do not include:
 - (a) remains the same.
 - (b) experimental or investigational services, clinical trials such as, the use of off-label drugs where this usage is not a national standard of practice, or non-FDA approved use of drugs, biologicals, and devices;
 - (c) and (d) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, MCA

37.86.2904 INPATIENT HOSPITAL SERVICES, BILLING REQUIREMENTS

- (1) through (6) remain the same.

(7) Medical records must be received within 30 days of request by the department or the department's designated review organization.

(a) Claims may be denied if the receipt of the medical records exceeds the designated time period.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2905 INPATIENT HOSPITAL SERVICES, GENERAL REIMBURSEMENT (1) remains the same.

(2) Interim reimbursement for cost-based facilities, ~~including exempt facilities and CAH facilities~~, is based on a hospital specific Medicaid inpatient cost-to-charge ratio, not to exceed 100%. Cost-based facilities will be reimbursed their allowable costs as determined according to ARM 37.86.2803. Final cost settlements for CAH facilities will be reimbursed at 101% of allowable costs.

(3) Except as otherwise specified in these rules, facilities reimbursed under the APR-DRG prospective payment system may be reimbursed, ~~in addition to the prospective APR-DRG rate~~, for the following:

(a) remains the same.

(b) readmissions, partial eligibility, and transfers, as set forth in ARM 37.86.2918;

(c) remains the same.

(d) disproportionate share hospital payments as provided in ARM 37.86.2925; and

~~(e) qualified rate adjustor payments, as set forth in ARM 37.86.2910; and~~

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

(4) PPS facilities may interim bill for stays equal to or exceeding 30 days at the same hospital.

(a) and (b) remain the same.

(c) The hospital must obtain authorization to interim bill prior to submission of the first claim and must provide medical records upon request of the department or ~~the department's~~ its designated review organization for continued stay reviews.

(5) and (6) remain the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-141, MCA

37.86.2907 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, APR-DRG PAYMENT RATE DETERMINATION (1) The department's APR-DRG prospective payment rate for inpatient hospital services is based on the classification of inpatient hospital discharges to APR-DRGs. The procedure for determining the APR-DRG prospective payment rate is as follows:

(a) Effective ~~October~~ July 1st of each year, the department will assign an APR-DRG to each Medicaid ~~patient~~ client discharge in accordance with the current APR-grouper program version, as developed by 3M Health Information Systems. The assignment of each APR-DRG is based on:

(i) through (b) remain the same.

(c) The department computes a Montana average base price per case. This base price includes in-state and out-of-state distinct part rehabilitation units and long term care (LTC) facilities. Effective ~~July 1, 2009~~ July 1, 2010 the average base price, including capital expenses, is \$4,235. Disproportionate share payments are not included in this price.

(i) The average base price for Center of Excellence hospitals, including capital expenses, is \$7,024. Disproportionate share payments are not included in this price.

~~(ii) The average base for distinct part rehabilitation units and long term care hospitals (LTCH), including capital expenses, is \$9,092. Disproportionate share payments are not included in this price.~~

(d) The relative weight for the assigned APR-DRG is multiplied by the average base price per case to compute the APR-DRG prospective payment rate for that Medicaid ~~patient~~ client discharge.

(2) The Montana Medicaid APR-DRG relative weight values, average national length of stay (ALOS), and outlier thresholds are contained in the APR-DRG Table of Weights and Thresholds (effective ~~October 1, 2008~~ July 1, 2010) published by the department. The department adopts and incorporates by reference the APR-DRG Table of Weights and Thresholds (effective ~~October 1, 2008~~ July 1, 2010). Copies may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2912 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, CAPITAL-RELATED COSTS ~~(1) The department will reimburse inpatient hospital service providers located in the state of Montana for capital-related costs that are allowable under Medicare cost reimbursement principles as set forth at 42 CFR 412.113(a), as amended through October 1, 2007. The department adopts and incorporates by reference 42 CFR 412.113(a) and (b), as amended through October 1, 2007, which set forth Medicare cost reimbursement principles. Copies of the cited regulation may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.~~

(2) remains the same but is renumbered (1).

~~(3) (2)~~ The interim payment made to CAHs ~~and exempt facilities~~ is based on the hospital specific cost-to-charge ratio and includes capital costs.

(3) The department adopts and incorporates by reference 42 CFR 412.113(a) and (b), and will calculate as provided in (1) and (2) capital-related costs that are allowable under Medicare cost reimbursement principles as established in 42 CFR 412.113(a) and (b) (March 29, 1985). Copies of the cited regulation may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2916 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, COST OUTLIERS (1) remains the same.

(2) To receive payment for a cost outlier, the combined ~~cost~~ costs of the medically necessary days and services of the inpatient hospital stay, as determined by the department, must exceed the cost outlier threshold established by the department for the APR-DRG.

(3) The department determines the outlier reimbursement for cost outliers for all hospitals and distinct part units, entitled to receive cost outlier reimbursement, as follows:

(a) computing an estimated cost for the inpatient hospital stay by multiplying the allowed charges for the stay by the statewide average PPS cost-to-charge ratio as set forth in ARM 37.86.2905;

(b) and (c) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2918 INPATIENT HOSPITAL, READMISSIONS, PARTIAL ELIGIBILITY, OUTPATIENT BUNDLING, AND TRANSFERS FOR PROSPECTIVE PAYMENT SYSTEM (PPS) FACILITIES ~~(1) This rule states the billing requirements applicable to inpatient hospital readmissions, partial eligibility, outpatient bundling, and transfers. Sections (2), (3), and (4) apply to PPS facilities unless otherwise noted. Subsection (2)(d) applies to PPS facilities.~~

~~(2)~~ (1) All readmissions occurring within 30 days will be subject to review to determine whether additional payment as a new APR-DRG or as an outlier is warranted. As a result of the readmission review, the following payment changes will be made:

(a) If it is determined that complications have arisen because of premature discharge and/or other treatment errors, then the APR-DRG payment for the first admission must be altered by combining the two admissions into one for payment purposes; ~~or,~~

(b) remains the same.

(c) A ~~patient~~ client readmission occurring in an inpatient rehabilitation hospital or a rehabilitation distinct part unit three days ~~prior to~~ after the initial date of discharge must be combined into one admission for payment purposes, with the exception of discharge to an acute care hospital for surgical APR-DRGs.

(d) Inpatient readmissions within 24 hours of discharge must be combined if the same condition is diagnosed.

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

~~(3)~~ (2) A transfer, for the purpose of this rule, is limited to those instances in which a ~~patient~~ client is transferred for continuation of medical treatment between two hospitals or distinct part units, one of which is paid under the Montana Medicaid prospective payment system.

(a) through (b) remain the same.

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

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2920 INPATIENT HOSPITAL PROSPECTIVE REIMBURSEMENT, HOSPITAL RESIDENTS (1) Payment for hospital residents will be made as follows:

(a) the hospital must request residency status from the department prior to submission of the first claim;

(a) remains the same but is renumbered (b).

(b) (c) final payment for the first 180 days of inpatient care hospital stay will be paid the APR-DRG payment for the case as computed in ARM 37.86.2907 plus any appropriate outlier and add-on payments;

(i) the hospital stay is from admit through the request for residency, if approved by the department; and

(ii) the length of stay must be greater than or equal to 180 days of inpatient care at the same facility.

(c) (d) final payment for all patient client care subsequent to the request date, which must be greater than 180 days will be reimbursed at 80% of the hospital specific estimated cost-to-charge ratio as computed by the department without cost settlement; and

(d) the hospital must obtain authorization to bill prior to submission of the first claim and must provide medical records upon request of the department or its designated review organization for continued stay reviews.

(e) the hospital must provide medical records upon request of the department or the department's designated review organization for continued stay reviews.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2921 HOSPITAL RESIDENCY STATUS REQUIREMENTS ~~(1) A recipient who is unable to be cared for in a setting other than the acute care hospital is eligible for hospital residency status.~~

~~(2)~~ (1) To obtain hospital residency status, the ~~recipient~~ client must meet the following requirements:

(a) a client who is unable to be cared for in a setting other than the acute care hospital is eligible for hospital residency status;

(a) (b) the recipient client must utilize a ventilator for a continuous period of not less than eight hours in a 24-hour period or require at least 40 ten hours of direct nursing care in a 24-hour period; and

(b) (c) the recipient client must have been an inpatient in an inpatient hospital the same hospital as the requesting hospital for a minimum of six continuous months.

(3) (2) The provider will have the responsibility of determining whether services could be provided in a skilled nursing care facility or by the home and community-based waiver program to a Medicaid ~~recipient~~ client within the state of Montana.

(4) (3) The provider shall maintain written records of inquiries and responses about the present and future availability of openings in nursing homes and the ~~H~~Home and ~~e~~Community-based ~~w~~ Waiver ~~p~~Program.

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

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2925 INPATIENT HOSPITAL REIMBURSEMENT, DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS (1) through (1)(b) remain the same.

(2) Subject to federal approval and the availability of sufficient state special revenue, all supplemental disproportionate share hospitals shall receive a supplemental disproportionate share hospital payment. In order to maintain access and quality in the most rural areas in Montana, critical access hospitals and ~~exempt hospitals~~ shall receive an increased portion of the available funding. The supplemental disproportionate share hospital payment shall be calculated using the formula: $SDSH=(M/D)*P$.

(a) For the purposes of ~~the~~ determining supplemental disproportionate share hospital payment amounts, the following definitions apply:

(i) remains the same.

(ii) "M" represents the number of weighted Medicaid paid inpatient days provided by the hospital for which the payment amount is being calculated.

(A) For critical access hospitals and ~~exempt hospitals~~, weighted Medicaid inpatient days shall equal the number of Medicaid inpatient days provided multiplied by 3.8.

(B) through (4) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2928 INPATIENT HOSPITAL REIMBURSEMENT, HOSPITAL REIMBURSEMENT ADJUSTOR (1) All hospitals meeting the eligibility requirements in ARM 37.86.2940 shall receive a hospital reimbursement adjustor (HRA) payment. The payment consists of two separately calculated amounts. In order to maintain access and quality in the most rural areas of Montana, critical access hospitals and ~~exempt hospitals~~ shall receive both components of the HRA. All other hospitals shall receive only Part 1, as defined in (2)(a). Eligibility for an HRA payment will be determined based on a hospital's year-end reimbursement status.

(2) Part 1 of the HRA payment will be based upon Medicaid inpatient utilization, and will be computed as follows: $HRA1 = (M \div D) \times P$.

(a) through (iii) remain the same.

(iv) "P" equals the total amount to be paid via Part 1 of the HRA. "P" consists of a state paid amount plus the applicable federal financial participation, (FFP). The portion of "P" that is paid by the state will equal the amount of revenue generated by Montana's hospital utilization fee, less all of the following:

- (A) through (C) remain the same.
- (3) Part 2 of the IRA payment will be based upon total hospital Medicaid charges, and will be computed as follows: $HRA2 = (I \div D) \times P$.
 - (a) through (iii) remain the same.
 - (iv) "P" equals the total amount to be paid via Part 2 of the HRA. "P" will be 8% of the total revenue generated by Montana's hospital utilization fee plus applicable ~~federal financial participation~~ (FFP).
 - (b) and (c) remain the same.

AUTH: 2-4-201, 53-2-201, 53-6-113, MCA

IMP: 2-4-201, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-6-149, MCA

37.86.2947 OUT-OF-STATE HOSPITAL AND CENTERS OF EXCELLENCE REIMBURSEMENT (1) Inpatient hospital services provided in border hospitals located ~~more than 100 miles outside the borders of the state of Montana~~ will be reimbursed ~~as provided under the APR-DRG prospective payment system described in ARM 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, and 37.86.2920.~~

(2) Medicaid reimbursement for inpatient services shall not be made to hospitals located more than 100 miles outside the borders of Montana or Centers of Excellence unless the provider has obtained authorization from the department or its designated review organization prior to providing services or prior to admission. All inpatient services provided in an emergent situation must be authorized as described in ARM 37.86.2801(4)(d).

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

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The department proposes to repeal the following rules:

37.86.2810 INPATIENT AND OUTPATIENT HOSPITAL SERVICES, QUALIFIED RATE ADJUSTMENT PAYMENT, ELIGIBILITY, AND COMPUTATION, is found on page 37-20435 of the Administrative Rules of Montana.

AUTH: 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

37.86.2910 INPATIENT HOSPITAL REIMBURSEMENT, QUALIFIED RATE ADJUSTMENT PAYMENT, is found on page 37-20455 of the Administrative Rules of Montana.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

5. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.86.2801, 37.86.2803, 37.86.2806, 37.86.2820,

37.86.2901, 37.86.2902, 37.86.2903, 37.86.2904, 37.86.2905, 37.86.2907, 37.86.2912, 37.86.2916, 37.86.2918, 37.86.2920, 37.86.2921, 37.86.2925, 37.86.2928, and 37.86.2947 and repeal of ARM 37.86.2810 and 37.86.2910 pertaining to Medicaid inpatient and outpatient hospital services.

The purpose of the proposed rule amendments is to update the administrative rules governing inpatient hospital services with 42 CFR 447.272 and to interface these rules with the amendment to Montana's Medicaid inpatient hospital state plan (attachment 4.19A) which has been approved by the Centers for Medicare and Medicaid Services (CMS).

As part of the prospective payment system (PPS) providing reimbursement for inpatient hospital facilities, the department proposes to establish two base rates on or before July 1 of each year. These two rates would include a Montana average base rate and an average base rate for hospitals meeting the criteria for Centers of Excellence as referenced in ARM 37.86.2907. Therefore, the primary reason for amending the rules regarding inpatient services is to establish these base rates for the coming state fiscal year.

The department is proposing to eliminate the separate base rate for in-state and out-of-state distinct part rehabilitation units and long-term care (LTC) facilities. The department feels that under the all patient refined diagnosis related groups (APR-DRG) reimbursement methodology, rehabilitation services would be appropriately reimbursed using the base rate described in ARM 37.86.2907(1)(c). The current APR-DRG reimbursement methodology reflects relative costs more accurately and efficiently than the former diagnosis related group (DRG) payment system.

In regard to the qualified rate adjustment (QRA) payment as described in ARM 37.86.2810 and 37.86.2910, the department is proposing to repeal the language in both rules. The department has not used the QRA reimbursement methodology within the past five years and, therefore, feels this language is obsolete.

In addition, all reference to "exempt" or "preferred hospitals" would be removed from the inpatient rules as the department no longer recognizes exempt or preferred hospital status. Also removed is any reference to QRA payments, eligibility, or computation as the department no longer incorporates QRA payments into the reimbursement methodology for inpatient hospitals.

ARM 37.86.2901

The changes include updates to obsolete definitions and the addition of new definitions.

ARM 37.86.2801, 37.86.2803, 37.86.2902, 37.86.2912, 37.86.2920, and 37.86.2921

The proposed amendments are not only to provide clarity, but also to update the content to meet requirements set forth in the current Code of Federal Regulations (CFR) and Montana Medicaid state plan.

Throughout the proposed amendments, corrections have been made regarding grammar, punctuation, and language. No change of substantive meaning is intended.

ARM 37.86.2810 and 37.86.2910

The department proposes repeal of these rules because they are obsolete.

Persons and Entities Affected

The proposed amendments will affect approximately 372 inpatient hospital providers both in and out-of-state. The proposed amendments will not affect services provided to Medicaid clients.

Alternative Considered

The alternative to the proposed rule amendments would be to make no changes to the existing rules. Leaving the existing rules unchanged would adversely affect providers in advising them of incorrect reimbursement (base) rates.

The department is not proposing an increase or decrease in base rates. Therefore, the proposed amendments will have a neutral budgetary impact.

Fiscal Effects

The department expects the proposed amendments in this notice to have a budget neutral effect. There is no impact to clients.

Estimated Financial/Budget Impacts

The department expects the proposed amendments in this notice to have a budget neutral effect.

As of April 19, 2010, the date this proposed rule amendment is filed with the Secretary of State, there is a projected Montana general fund budget deficit as that term is defined in 17-7-140(3), MCA for state fiscal year 2011. The Governor has instructed the department and other agencies of state government to implement a general fund spending reduction plan. As part of the department's spending reduction plan appropriated provider rate increases for state fiscal year 2011 will not be implemented.

6. The department intends the proposed rule changes to be applied effective July 1, 2010.

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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

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

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

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

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

/s/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 19, 2010.

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 37.90.401 and 37.90.410) PROPOSED AMENDMENT
pertaining to home and community-)
based services for adults with severe)
disabling mental illness)

TO: All Concerned Persons

1. On May 20, 2010, at 3:00 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated 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 May 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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:

37.90.401 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: FEDERAL AUTHORIZATION AND STATE ADMINISTRATION (1) The department ~~has submitted a proposal seeking approval from the U.S. Department of Health and Human Services (HHS), under 42 CFS 441.300 through 441.310, to establish~~ed a program of Medicaid funded home and community-based services for persons who have severe disabling mental illness, as defined in ARM 37.89.103, and who would otherwise have to reside in and receive Medicaid reimbursed care in a nursing facility or a hospital. Upon formal approval, the department will initiate the program in accordance with the conditions of approval governing federal and state authorities and these rules.

(2) through (3) remain the same.

(4) The state has received federal approval to waive statewide coverage in the provision of program services. Program services may only be delivered to recipients in the following service areas for which federal approval of coverage has been received:

(a) remains the same.

- (b) Cascade County Region, inclusive of the counties of Cascade, Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole; ~~and~~
- (c) Butte-Silver Bow County Region, inclusive of the counties of Butte-Silver Bow, Beaverhead, Deer Lodge, Granite, ~~and Powell~~, and Jefferson; and
- (d) Missoula County.

AUTH: 53-2-201, 53-6-402, MCA

IMP: 53-2-401, 53-6-402, MCA

37.90.410 HOME AND COMMUNITY-BASED SERVICES FOR ADULTS WITH SEVERE DISABLING MENTAL ILLNESS: ELIGIBILITY AND SELECTION

- (1) and (2) remain the same.
- (3) A person is qualified to be considered for enrollment in the program if the person meets the following criteria:
 - (a) through (f) remain the same.
 - (g) resides in one of the following service areas for which federal approval of coverage has been received:
 - (i) remains the same.
 - (ii) Cascade County Region, inclusive of the counties of Cascade, Blaine, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole; ~~and~~
 - (iii) Butte-Silver Bow County Region, inclusive of the counties of Butte-Silver Bow, Beaverhead, Deer Lodge, Granite, ~~and Powell~~, and Jefferson; and
 - (iv) Missoula County.
 - (4) through (7)(h) remain the same.

AUTH: 53-2-201, 53-6-402, MCA

IMP: 53-2-401, 53-6-402, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.90.401 and 37.90.410 pertaining to home and community-based services (HCBS) for adults with severe disabling mental illness (SDMI). The proposed amendments are necessary to expand the services to Jefferson and Missoula Counties.

The SDMI HCBS waiver was approved in 2006 for three sites, Billings, Great Falls, and Butte. The department is proposing an expansion of the Butte site to include Jefferson County without an increase in the number of persons who can participate. The department also proposes the creation of a fourth site by authorizing waiver services to Missoula County with the ability to serve a maximum of 30 individuals for fiscal year 2010.

ARM 37.90.401

The department is proposing an amendment to ARM 37.90.401 to reflect the federal authorization of the HCBS waiver for adults with severe and disabling mental illness. The waiver proposal was approved December 1, 2006.

The department is also proposing an amendment to ARM 37.90.401 to add Jefferson County to the Butte-Silver Bow County region and to add a fourth region that includes Missoula County. The expansion of the SDMI HCBS waiver service areas was approved by the 2009 Montana Legislature.

ARM 37.90.410

The department is proposing an amendment to ARM 37.90.410 to add Jefferson and Missoula Counties to the list of counties in which individuals can be eligible for HCBS for adults with SDMI.

The program is administered under an approved waiver pursuant to section 1915(c) of the Social Security Act that identifies specific counties in which waiver services are available. An amendment to the waiver and to administrative rules must be submitted prior to implementing changes to the approved waiver application. The proposed rule change will serve as public notice of the waiver expansion.

The department rejected the alternative of not expanding waiver services. This program has been successful in allowing persons with mental illness to live independently in their communities as an alternative to nursing home level of care. With national studies indicating that persons with mental illness have a life expectancy that is 20 years shorter than the national average, this program allows people with mental illness to enjoy a higher quality life that meets both mental and physical health needs.

Estimated financial and budget impacts

The 2009 Legislature approved expansion of the SDMI waiver. In fiscal year 2010 waiver services will expand to Missoula County with a total cost of \$810,000 (\$190,917 state special revenue and \$619,083 federal funds). In fiscal year 2011, the cost will be \$993,792 (\$225,690 state special revenue and \$768,102 federal funds). The addition of Jefferson County to the Butte site has no fiscal impact because the number of persons served will not change.

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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 19, 2010.

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 37.79.135, 37.79.201,) PROPOSED AMENDMENT
37.79.303, 37.79.316, 37.79.317, and)
37.79.325 pertaining to Healthy)
Montana Kids Plan)

TO: All Concerned Persons

1. On May 27, 2010, at 1:30 p.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated 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 May 18, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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:

37.79.135 PROSPECTIVE PAYMENT SYSTEM FOR FEDERALLY QUALIFIED HEALTH CENTER (FQHC) REIMBURSEMENT (1) The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) requires states with separate or combined CHIP programs to pay federally qualified health centers (FQHCs) and rural health centers (RHCs) using the Medicaid outpatient prospective payment system (OPPS) as described in ARM 37.86.4413. ~~An OPPS rate for the HMK coverage group will be developed by the department. The existing CHIP provider rate will be used for the HMK coverage group until the department establishes the OPPS rate~~ The department adopts the Medicaid OPPS rate for children enrolled in the HMK coverage group.

AUTH: 53-4-1105, MCA
IMP: 53-4-1104, 53-4-1105, MCA

37.79.201 ELIGIBILITY (1) An applicant may be eligible for covered services under the HMK coverage group if:
(a) through (g) remain the same.

(h) the applicant does not have or has not had creditable health insurance coverage for three months prior to becoming eligible for the HMK coverage group. This three month period does not apply if the parent or guardian providing the insurance:

- (i) through (vii) remain the same.
- (viii) paid more than 50% of the insurance premium; or
- (ix) has insurance coverage that is not accessible (e.g. coverage is through an HMO in another state); or
- (x) loses Tricare military health insurance.
- (2) through (5)(d) remain the same.

~~(6) An applicant whose HMK coverage group enrollment ended because his or her parent was activated into military service and who was insured through Tricare, which is the insurance available to active duty and retired military families during the parent's military activation period, is not subject to the minimum three month waiting period for previous creditable health insurance and will be enrolled in the HMK coverage group if he or she continues to be eligible for the HMK coverage group. Upon notification that the parent was deactivated and the applicant loses Tricare coverage, the applicant may be re-enrolled:~~

- ~~(a) the month after HMK Plan is notified, if the family has an open family span; or~~
- ~~(b) the month after a completed application is received and the applicant requalifies for HMK coverage group.~~

(7) through (13) remain the same but are renumbered (6) through (12).

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.303 BENEFITS NOT COVERED (1) In addition to any exclusions noted elsewhere in these rules, the following services are not covered benefits:

- (a) through (v) remain the same.
- (w) cochlear implants and associated components;
- (w) and (x) remain the same but are renumbered (x) and (y).

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.316 MENTAL HEALTH BENEFITS (1) Mental health benefits include:

- (a) and (b) remain the same.
- ~~(2) Mental health benefits are limited to:~~
 - ~~(a) 21 days of inpatient mental health care per benefit year;~~
 - ~~(b) partial hospitalization benefits which are exchanged for inpatient days at a rate of two partial treatment days for one inpatient day; and~~
 - ~~(c) 20 outpatient visits per year which can be furnished in community based settings or in a mental hospital.~~
- ~~(3) Mental health benefits will not be limited for enrollees with the following disorders:~~
 - ~~(a) schizophrenia;~~

- ~~(b) schizoaffective disorder;~~
- ~~(c) bipolar disorder;~~
- ~~(d) major depression;~~
- ~~(e) panic disorder;~~
- ~~(f) obsessive-compulsive disorder; and~~
- ~~(g) autism.~~

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

AUTH: 53-4-1009, MCA

IMP: 53-4-1003, MCA

37.79.317 CHEMICAL DEPENDENCY BENEFITS SUBSTANCE USE DISORDER BENEFITS (1) remains the same.

~~(2) The combined benefit for inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, is subject to a maximum benefit of \$6,000 in a 12-month period. The life inpatient time maximum benefit is \$12,000. If the inpatient lifetime maximum benefit is met, the annual outpatient benefit is reduced to \$2,000.~~

~~(3) (2) Benefits for medical detoxification treatment will be paid the same as any illness and are not subject to the annual and lifetime limits stated above.~~

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

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

37.79.325 AUDIOLOGY BENEFITS (1) and (2) remain the same.

~~(3) Hearing aids and specified supplies are a covered benefits, and prior Prior authorization is required for hearing aids.~~

AUTH: 53-4-1004, 53-4-1009, 53-4-1105, MCA

IMP: 53-4-1003, 53-4-1004, 53-4-1009, 53-4-1104, 53-4-1105, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.79.135, 37.79.201, 37.79.303, 37.79.316, 37.79.317, and 37.79.325 pertaining to the Healthy Montana Kids Plan.

The department administers the Healthy Montana Plan, which is funded by the state and federal government to pay for covered health care services to low income Montana children. The plan has two coverage groups referred to as HMK and HMK Plus. The HMK Plus coverage group is administered through the Montana Medicaid program. The HMK coverage group is administered as a self-funded health coverage program that makes direct payment to providers for service delivered to eligible enrollees. The department contracts with a third party administrator (TPA) to maintain a provider network and pay claims for the HMK coverage group. Provider rates are generally set as a percentage of the TPA's rate schedule.

In November, 2008, the Montana voters approved Initiative 155 that enacted the Healthy Montana Kids (HMK) Plan Act. The Healthy Montana Kids Plan Act is now codified at Title 53, chapter 4, part 11, MCA. Congress also enacted significant changes in the CHIP program in Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111-3. Changes in the administrative rules implementing HMK and HMK Plus are necessary because of changes resulting from both Acts. The first phase of rule changes went into effect October 1, 2009. This is the second phase of rule changes.

ARM 37.79.135

The department adopted this rule prior to receiving guidance from the federal Department of Health and Human Services Centers for Medicare and Medicaid (CMS). CMS has advised the department that the Medicaid outpatient prospective payment system (OPPS) rate applies to federally qualified health centers (FQHCs) for services to the HMK and HMK Plus coverage group therefore the department is proposing to adopt Medicaid's prospective payment system (PPS) and rate for FQHCs and rural health centers (RHC) services for children enrolled in HMK. This rule change will bring HMK into compliance with federal Children's Health Insurance Program Reauthorization Act (CHIPRA) requirements.

ARM 37.79.201

The department proposes to move ARM 37.79.201(6) and include it as one of the exceptions to the three-month waiting period listed in ARM 37.79.201(1)(h). This clarification would not change the intent the rule; it will provide better structure.

ARM 37.79.303

The department proposes the following addition to the list of benefits not covered: cochlear implants and related components. Cochlear implants and/or related cochlear components are not hearing aid benefits.

ARM 37.79.316

The department proposes to amend this rule to comply with requirements of CHIPRA. CHIPRA (Section 502) prohibits separate state child health plans that provide mental health benefits from imposing annual and lifetime dollar limits on mental health benefits more restrictive than those applicable to medical and surgical benefits.

ARM 37.79.317

The department proposes to amend this rule to comply with requirements of CHIPRA. CHIPRA (Section 502) prohibits separate state child health plans that provide substance use disorder benefits from imposing annual and lifetime dollar limits on substance use disorder benefits that are more restrictive than those

applicable to medical and surgical benefits. Current rule limits the combined benefit for inpatient and outpatient treatment for alcoholism and drug addiction, excluding costs for medical detoxification, to a maximum of \$6,000 in a 12-month period. The lifetime inpatient benefit is \$12,000 and if the lifetime maximum is met, the annual outpatient benefit is reduced to \$2,000.

ARM 37.79.325

The department proposes to clarify the current rule and explain hearing aid services and supplies are a covered benefit. Current rule does not indicate covered benefits include services and supplies affiliated with hearing aids.

This proposed change will affect approximately 20 members per benefit year. Fiscal impact with this change will be minimal, as the HMK coverage group currently covers hearing aid services and supplies.

Fiscal Impact

It is estimated that approximately 19,000 HMK enrollees and approximately 4,600 HMK participating providers may be impacted by the proposed rule amendments. The annual fiscal impact of this will be approximately \$541,000 in fiscal year 2011 and \$573,000 in fiscal year 2012. The state fiscal year 2011 federal cost is \$416,000 and the state cost is \$125,000. The state fiscal year 2012 federal cost is approximately \$441,000 and the state cost is \$132,000.

5. The department intends the proposed rule changes to be applied effective July 1, 2010.

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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 19, 2010.

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

In the matter of the amendment ARM) NOTICE OF PUBLIC HEARING ON
37.85.212 pertaining to the resource) PROPOSED AMENDMENT
based relative value scale (RBRVS))

TO: All Concerned Persons

1. On May 20, 2010, 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 May 11, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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:

37.85.212 RESOURCE BASED RELATIVE VALUE SCALE (RBRVS)
REIMBURSEMENT FOR SPECIFIED PROVIDER TYPES (1) For purposes of this rule, the following definitions apply:

(a) remains the same.

(b) "Conversion factor" means a dollar amount by which the relative value units, or the ~~base and time~~ anesthesia units for anesthesia services, are multiplied in order to establish the RBRVS fee for a service. Effective July 1, 2008 there are four conversion factor categories. They are:

(i) physician services, which applies to the following health care professionals listed in (2): physicians, ~~mid-levels~~ mid-level practitioners, podiatrists, public health clinics, independent diagnostic testing facilities (IDTF), ~~nutrition providers~~, qualified Medicare beneficiary (QMB) QMB and early and periodic screening, diagnostic and treatment (EPSDT) EPSDT chiropractors, laboratory and x-ray services, family planning clinics, and dentists ~~rendering providing medical procedures services~~. The conversion factor for physician services for state fiscal year ~~2010~~ 2011 is \$40.09;

(ii) allied services, which applies to the following health care professionals listed in (2): physical therapists, occupational therapists, speech therapists, optometrists, opticians, audiologists, and school-based services. The conversion factor for allied services for state fiscal year ~~2010~~ 2011 is \$30.39;

(iii) mental health services, which applies to the following health care professionals listed in (2): licensed psychologists, licensed clinical social workers, and licensed professional counselors. The conversion factor for mental health services for state fiscal year ~~2010~~ 2011 is \$24.26; and

(iv) anesthesia services, which applies to anesthesia services. The conversion factor for anesthesia services for state fiscal year ~~2010~~ 2011 is \$27.55.

(c) through (f) remain the same.

(g) "RBRVS fee" for a covered procedure means the amount calculated by multiplying the relative value units (or the ~~base and time~~ anesthesia units for anesthesia services) for the procedure by the appropriate conversion factor. If applicable, a rate variable may be applied to the RBRVS fee to calculate the Montana Medicaid fee for the procedure.

(h) remains the same.

(i) "Resource based relative value scale (RBRVS)" means the most current version of the Medicare resource based relative value scale contained in the ~~physicians'~~ Medicare Physician Fee Schedule adopted by the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services and published at ~~73~~ 74 Federal Register ~~224~~ 226, ~~69726~~ 61738 (~~November 19, 2008~~ November 25, 2009), effective January 1, ~~2009~~ 2010 which is adopted and incorporated by reference. A copy of the Medicare Physician Fee Schedule may be obtained from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951. The RBRVS reflects RVUs for estimates of the actual effort and expense involved in providing different health care services.

(j) remains the same.

(2) Services provided by the following health care professionals will be reimbursed in accordance with the RBRVS methodology set forth in (3):

(a) through (i) remain the same.

(j) ~~providers of clinic services~~ public health clinics;

(k) ~~providers of EPSDT services~~;

(l) through (o) remain the same but are renumbered (k) through (n).

(p) ~~providers of oral surgery services~~;

(q) ~~(o) providers of pathology and laboratory~~ and x-ray services;

(r) remains the same but is renumbered (p).

(s) ~~(q)~~ school-based services; and

(t) ~~(r)~~ QMB and EPSDT ~~chiropractic services~~. chiropractors;

(s) family planning clinics; and

(t) anesthesia services.

(3) Except as set forth in (8) through (12)(a)(vi), the RBRVS fee for a covered service is calculated by multiplying the RVUs determined in accordance with (7) through (7)(a)(ii)(C) (or the ~~base and time~~ units for anesthesia services) by the conversion factor, ~~which is required to achieve the overall budget appropriation for provider services made by the Montana Legislature in the most recent legislative session~~. The RBRVS fee may also be multiplied by a rate variable to calculate the fee paid by Medicaid.

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

(5) For state fiscal year ~~2010~~ 2011, policy adjustors will be used to accomplish the targeted funding allocations. The department's list of services affected by policy adjustors through July 1, ~~2009~~ 2010 is adopted and incorporated by reference. The list is available from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(6) ~~The 61st Legislature appropriated additional funds for state fiscal year 2010. For provider services identified in (2) there will be \$1,065,121 additional funds. All conversion factors may be adjusted, pursuant to 17-7-140, MCA, to ensure that the expenditure of appropriations does not exceed available revenue.~~

(7) The RVUs for most services are adopted from the ~~resource based RBRVS~~ Medicare Physician Fee Schedule described in (1). For services for which the ~~RBRVS~~ Medicare does not specify RVUs, the department sets those RVUs as follows:

~~(a) The RVUs for a Medicaid covered service provided by any of the provider types specified in (2) are calculated as follows:~~

~~(i) if Medicare sets RVUs, the Medicare RVUs are applicable;~~

~~(ii) if Medicare does not set RVUs but Medicaid sets RVUs, the Medicaid RVUs are set in the following manner:~~

~~(A) (a) convert the existing dollar value of a fee to an RVU value;~~

~~(B) (b) evaluate the RVU of similar services and assign an RVU value; or~~

~~(C) (c) convert the average by report dollar value of a fee to an RVU value.~~

(8) Except for physician administered drugs and vaccine administration as provided in ARM 37.86.105(4), clinical, laboratory services, and anesthesia services, if neither Medicare nor Medicaid sets RVUs, then reimbursement is by report.

(a) remains the same.

(b) For state fiscal year ~~2010~~ 2011, the by report rate is ~~46%~~ 48% of the provider's usual and customary charges.

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

(10) For anesthesia services the department pays the lower of the following for procedure codes with fees:

(a) remains the same.

(b) a fee determined by multiplying the anesthesia conversion factor by ~~the sum of the applicable base and time~~ anesthesia units, and then multiplying the product by the applicable policy adjustor, if any;

(c) through (11)(b) remain the same.

(12) Subject to the provisions of (12)(a), when billed with a modifier, payment for procedures established under the provisions of (7) is a percentage of the rate established for the procedures.

(a) The methodology to determine the specific percent for each modifier is as follows:

(i) and (ii) remain the same.

(iii) The department's list of the specific percents for the modifiers used by Medicaid as amended through July 1, ~~2009~~ 2010 is adopted and incorporated by reference. A copy of the list is available on request from the Department of Public Health and Human Services, Health Resources Division, 1400 Broadway, P.O. Box 202951, Helena, MT 59620-2951.

(iv) through (vi) remain the same.

(13) In applying the RBRVS methodology set forth in this rule, Medicaid reimburses in accordance with Medicare's policy on the bundling of services, as set forth in the ~~physicians'~~ Medicare Physician Fee Schedule adopted by CMS and published in the Federal Register annually, whereby payment for certain services constitutes payment for certain other services which are considered to be included in those services.

(14) remains the same.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-2-201, 53-6-101, 53-6-111, 53-6-113, MCA

4. The Department of Public Health and Human Services (the department) is proposing amendments to ARM 37.85.212. This rule implements Montana Medicaid's resource based relative value scale (RBRVS) reimbursement method for specified provider types.

The Montana Medicaid program is administered by the department to provide health care to Montana's qualified low income and disabled residents (hereinafter "Medicaid clients"). It is a public assistance program paid for with state and federal funds appropriated to pay health care providers (hereinafter "Medicaid providers") for the covered medical services they deliver to Medicaid clients. The Legislature delegates authority to the department to set the reimbursement rates Montana pays Medicaid providers for Medicaid client's covered services. See 53-6-106(8) and 53-5-113, MCA.

Montana Medicaid uses the RBRVS rate system to calculate the fee Montana Medicaid pays to 20 types of health care professionals. The department is proposing to amend ARM 37.85.212(1)(b)(i) and (2) to accurately describe these health care professionals using current terminology. This is not a substantive change in the rule.

The RBRVS system is used nationwide by most health plans, including Medicare and Medicaid. The relative value unit component of the RBRVS system is revised annually by the Centers for Medicare and Medicaid Services (CMS) and the American Medical Association. The department annually proposes to amend ARM 37.85.212(1)(c)(i) to adopt current relative value units (RVUs). An RVU is a numerical value assigned to each medical procedure. RVUs are based on physician work, practice expense and malpractice and express the relative effort and expense expended to provide one procedure compared with another. RVUs are added for new procedures and the RVUs of particular procedures may increase or decrease from year to year.

The fee paid for a procedure by a health plan is calculated by multiplying that procedure's RVU by the health plan's conversion factor. Montana Medicaid's conversion factors for physicians' services, allied service, mental health services, and anesthesia services are published in ARM 37.85.212(b)(i) through (iv). The

department is proposing to maintain its four conversion factors at the state fiscal year (SFY) 2010 current level. Although a particular fee for a particular procedure may increase or decrease based on a change to its RVU, the department's intent is to maintain overall spending and provider fees at the SFY 2010 level, treating all RBRVS providers consistently.

The department annually calculates conversion factors for allied services, mental health services, and anesthesia services. These conversion factors are calculated by dividing the Montana Legislature's appropriation for Medicaid client's health care during the upcoming SFY by the estimated total units of health care, expressed as total RVUs paid, to be provided during the upcoming SFY. The resulting quotient is the conversion factor. The RVU for a procedure multiplied by the conversion factor is the fee paid for the procedure. The conversion factor for licensed physicians is set by 53-6-124 through 53-6-127, MCA and the fee paid is funded by legislative appropriations.

The department is proposing amendments to ARM 37.85.212(3) and (6) to reflect the implementation of 17-7-140, MCA in SFY 2011 and the impact of a projected general fund budget deficit on the ability of the state of Montana to pay Medicaid provider rates. All fees paid to Medicaid providers for services to Medicaid clients during SFY 2011 are a result of funds appropriated by the 61st Montana Legislative Session and, except as limited by 17-7-140(2), MCA, those appropriations are subject to the Governor's authority, pursuant to 17-7-140, MCA, to reduce agency spending when the appropriated revenue appears to exceed the collected revenue.

The conversion factors and fees established by this rule are set in compliance with Title 53 and Title 17 to set SFY 2011 RBRVS rates at the SFY 2010 level. This will reduce state spending in SFY 2011. The department has analyzed what programs are mandatory or permissive and the impact of this proposed reduction in spending on the purpose of the programs it administers. The department considered the alternative of increasing Medicaid fees paid to licensed physicians and decreasing other providers' fees more. That solution to the current revenue shortfall would have a greater adverse impact on more Medicaid providers and clients. The department is attempting to maintain fees at the 2010 level for all providers and avoid lopsided adverse impacts of the shortfall in the state's revenue.

The department also considered the impact the rate changes will have on efficiency, economy, quality of care, and access and concluded that the rates are still sufficient to meet the requirements of 42 USC 1396a(a)(30(A).

ARM 37.85.212(7) through (13) address rates for services without RVUs. The amendment to ARM 37.85.212(7) sets the "by report" rate for SFY 2011 that applies if no RVU is specified in the Medicare Physician Fee Schedule or if an alternative rate exists.

As of April 19, 2010, the date this proposed rule amendment is filed with the Secretary of State, there is a projected Montana general fund budget deficit as that

term is defined in 17-7-140(3), MCA for state fiscal year 2011. The Governor has instructed the department and other agencies of state government to implement a general fund spending reduction plan. As part of the department's spending reduction plan appropriated provider rate increases for state fiscal year 2011 will not be implemented.

Fiscal Impact

The estimated cumulative fiscal impact of these rules is:

	<u>Total Cost</u>	<u>State General Fund</u>	<u>Federal Match</u>
SFY 2011	\$0	\$0	\$0

This rule amendment is estimated to impact 6,170 Medicaid providers and 91,710 Medicaid clients.

5. The department intends the proposed rule changes to be applied effective July 1, 2010.

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: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 19, 2010.

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

In the matter of the amendment ARM) NOTICE OF PUBLIC HEARING ON
37.86.5201, 37.86.5202, 37.86.5204,) PROPOSED AMENDMENT
37.86.5205, and 37.86.5206)
pertaining to Medicaid Health)
Improvement Program)

TO: All Concerned Persons

1. On May 27, 2010, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing in the auditorium of the Department of Public Health and Human Services Building, 111 North Sanders, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Health and Human Services no later than 5:00 p.m. on May 18, 2010, to advise us of the nature of the accommodation that you need. Please contact Rhonda Lesofski, 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:

37.86.5201 DISEASE MANAGEMENT PROGRAM HEALTH
IMPROVEMENT PROGRAM: DEFINITIONS The following terms and definitions apply to the ~~disease management~~ Health Improvement pProgram:

(1) ~~"Disease management organization (DMO)" means a clinically qualified organization that has a disease management program which uses evidence based health care practices.~~

(2) ~~"Disease management program services" means specialized services provided to Medicaid clients meeting the eligibility criteria listed in ARM 37.86.5205. Disease management program services are aimed at care coordination, client education, improved client self care, and efficiency, and cost effectiveness of services.~~

(3) (1) "Eligible client" means a Montana Medicaid or Healthy Montana Kids Plus (HMK Plus) client who has the disease management Health Improvement pProgram's specified combination of eligibility and ~~disease~~ risk factors.

(4) (2) "Enrolled client" means an eligible client who has been notified in writing of enrollment in the disease management Health Improvement pProgram and

~~eligibility to receive disease management program services and who has not declined to participate.~~

~~(5) (3) "Evidence based healthcare health care practice" means a clinical approach to practicing medicine based on the clinician's awareness of medical evidence and the strength of that evidence to support the management of a disease treatment process.~~

~~(4) "Health center" means a tribal health center or a community-based health clinic or center that serves populations with limited access to care, has a patient majority governing board and a sliding payment scale.~~

~~(5) "Health improvement program services" means specialized services provided to Medicaid and HMK Plus clients meeting the eligibility criteria listed in ARM 37.86.5205. Health improvement program services are care coordination and client education for improved client self-care, efficiency, and cost effectiveness of services.~~

~~(6) "Medical home" means one primary care provider or clinic who provides that delivers the majority of all ambulatory health care services to each client. This provider The medical home is the client's source for routine or preventive healthcare health care.~~

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

37.86.5202 DISEASE MANAGEMENT HEALTH IMPROVEMENT

PROGRAM: GENERAL (1) ~~The disease management~~ Health Improvement pProgram provides coordinated health care interventions and education for Medicaid and HMK Plus clients ~~meeting the eligibility criteria listed in ARM 37.86.5205.~~ The purpose of the program is to provide and/or coordinate services that decrease utilization and cost while optimizing treatment and improving health outcomes for clients.

~~(2) A disease management program must include the following procedures:~~

~~(a) evaluate each enrolled client;~~

~~(b) prioritize disease management program services provided to an enrolled client based on the client's need or other criteria, as appropriate; and~~

~~(c) contact and coordinate with a department or department authorized case manager as appropriate for planned service delivery to an enrolled client.~~

~~(3) (2) Disease management~~ Health improvement program services must ~~provide~~ include one or more of the following to each ~~enrolled~~ identified high risk client:

~~(a) and (b) remain the same.~~

~~(c) instruction regarding self-managing the targeted conditions;~~

~~(d) remains the same.~~

~~(e) coordination with a department or department~~ other authorized case managers.

~~(4)(3) Disease management~~ Health improvement program services do not:

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

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

37.86.5204 CRITERIA FOR DETERMINING CHRONIC DISEASES
MEDICAID AND HEALTHY MONTANA KIDS PLUS (HMK PLUS) ELIGIBLE
INDIVIDUALS MANAGED UNDER THE DISEASE MANAGEMENT HEALTH
IMPROVEMENT PROGRAM

~~(1) The department uses the criteria listed in this rule to specify the chronic conditions included in the disease management program and the age groups eligible to participate. Conditions and age groups employs high risk case identification to assign those individuals who are potentially high risk or high cost to the Health Improvement Program. Selection criteria are subject to change as clinical practices and evidenced-based health care practice guidelines change. The following criteria are used:~~

~~(a) disease management program services improve client self-management, decrease medical service utilization and costs, or improve clinical measures and health outcomes;~~

~~(b) the existing clinical practice for the condition varies from evidence-based health care best practice guidelines;~~

~~(c) the prevalence of the condition in the Medicaid population is sufficient to warrant management;~~

~~(a) individuals who have high medical costs;~~

~~(b) individuals who are at risk for above-average future medical service utilization; and~~

~~(d) (c) a client with the condition is individuals who are able to understand and apply condition specific recommended health management techniques; and~~

~~(e) management of the condition does not clinically conflict with other co-morbidities.~~

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

37.86.5205 DISEASE MANAGEMENT HEALTH IMPROVEMENT
PROGRAM: CLIENT ELIGIBILITY AND ASSIGNMENT

~~(1) To receive disease management health improvement services an eligible client must be:~~

~~(a) a recipient of Montana Medicaid or HMK Plus; and~~

~~(b) eligible for the Passport to Health Program, diagnosed with at least one of the chronic conditions selected for program management as determined by Montana Medicaid under ARM 37.86.5204; and~~

~~(c) within the specified age criteria as determined under ARM 37.86.5204 for the chronic condition selected for program management.~~

~~(2) A To receive Health Improvement Program services an eligible client must not be:~~

~~(a) receiving mental health service plan (MHSP) benefits, specified low income Medicare beneficiary (SLMB) benefits, qualified Medicare beneficiary (QMB) benefits, qualified individual program (QI) benefits, or both Medicare and Medicaid (dual eligibility) benefits;~~

~~(b) residing in a nursing home or institutional setting;~~

~~(c) receiving Medicaid benefits through presumptive eligibility;~~

~~(d) (a) eligible for receiving~~ third party coverage that provides disease management program services or requires administrative controls that would duplicate or interfere with Montana Medicaid's ~~disease management~~ Health Improvement ~~p~~Program; ~~or~~

~~(e) (b) receiving case management services that disease management health improvement~~ program services would duplicate; or

(c) receiving Medicaid or HMK Plus for less than three months.

(3) A client meeting the eligibility requirements in this rule:

(a) is automatically enrolled in the ~~disease management~~ Health Improvement ~~p~~Program;

(b) through (d) remain the same.

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

37.86.5206 DISEASE MANAGEMENT HEALTH IMPROVEMENT PROGRAM: SCOPE OF SERVICES AND REIMBURSEMENT (1) ~~If a disease management~~ A Health Improvement ~~p~~Program is provided by a DMO, the program must meet the following criteria:

(a) if the department chooses to contract for services, the contractor must have the ability to provide the program described in ARM 37.86.5202 and the program requirements stated in the contract between the department and the DMO must be fulfilled;

(b) if the department chooses to contract for service, the scope of practice must be appropriate for the contractor provider of the health care service; and

(c) the DMO contractor must comply with all other applicable state and federal requirements.

(2) Only a DMO contracted with the department may bill and be reimbursed for providing disease management services. Billing requirements and payment methodology will be described in a contract between the DMO and the department. A health center contracted with the department will be paid a per member per month case management fee for every eligible client in their service area for providing health improvement services. A health center as defined in ARM 37.86.5201 is qualified to contract with the department to provide a health improvement program. The health center must offer supportive services including but not limited to health coaching, care management, coordination with primary care providers, and referrals. The health center must be a Passport to Health provider.

AUTH: 53-6-101, 53-6-113, MCA

IMP: 53-6-101, 53-6-113, MCA

4. The Department of Public Health and Human Services (the department) is proposing the amendment of ARM 37.86.5201, 37.86.5202, 37.86.5204, 37.86.5205, and 37.86.5206. The department administers the Montana Medicaid program, a public assistance program jointly funded by the state and federal government. Montana Medicaid pays providers for covered health care services delivered to eligible low income and disabled Montana residents enrolled in Medicaid.

These proposed rule amendments pertain to the Health Improvement Program that is currently called "the Disease Management Program". The Health Improvement Program is a Medicaid service for qualified Medicaid clients to coordinate health care and educate clients. The purpose of the program is to improve clients' health and reduce Montana Medicaid's health care costs by reducing unnecessary health care utilization.

These proposed rule amendments are necessary to change the program name from "disease management" to "health improvement". This is a shift in program philosophy from a disease-state focus to improving patients' overall health. This involves managing a variety of diseases and co-morbidities as well as offering preventive services and assisting patients with psychosocial issues that may be hindering the ability to address medical issues.

These proposed rule amendments are also necessary to state the change of the delivery system from disease management organizations to health centers. This change will bring the delivery of health improvement program services into the local community, rather than provision by an out-of-state vendor, which the department believes will be more effective.

Adding the term "Healthy Montana Kids Plus" (HMK Plus) is a necessary change because of the expansion and renaming of Montana Medicaid for children ages 0 through 19.

The proposed amendments to this rule also change how Montana Medicaid will identify clients eligible for the Health Improvement Program. Medicaid will now encourage primary care providers to refer clients at risk of high utilization of medical services and will identify clients through an analysis of claims history who are at risk of high utilization of medical services. This change is necessary because the Centers for Medicare and Medicaid Services (CMS) requires it for Montana to operate this program as an enhanced primary care case management program under the department's Passport to Health waiver. These proposed amendments will not result in additional costs or reduce the number of eligible clients.

ARM 37.86.5201

The proposed amendment to ARM 37.86.5201 with the name change to the Health Improvement Program embodies a more accurate label of the philosophy of overall health improvement rather than focused disease management. The definition of "health center" is added because the department intends to provide the service through health centers, including tribal health centers, rather than through the existing disease management organization model. The program will deliver services in a local setting rather than limiting the provision of services to DMOs. Approval for this approach as an enhancement to Montana Medicaid's primary care case management program, Passport to Health, was granted effective October 1, 2009 by CMS under a 1915(b) waiver amendment. The rule change clarifies the definition of

medical home and emphasizes the importance of coordinated care through the medical home.

ARM 37.86.5202

The term "disease management" is being proposed to be amended to "health improvement". The HMK Plus eligibility group is added. Procedures that must be included in a disease management program are deleted as these procedures no longer apply.

ARM 37.86.5204

The proposed amendment to ARM 37.86.5204 states that eligible clients will be identified through primary care provider referral and risk assessments. This allows Montana Medicaid greater flexibility to provide preventive services for patients referred by primary care providers before they develop chronic health conditions. Under the former Disease Management Program, clients were identified only through claims data, thus a current diagnosed illness was needed to benefit from the program.

ARM 37.86.5205

The proposed amendment to ARM 37.86.5205 clarifies the Medicaid and HMK Plus client groups eligible to receive services and those not eligible. The program requires eligibility for Passport to Health. ARM 37.86.5205 is amended to highlight the Passport eligibility requirement and to mirror the 1915(b) waiver approved by CMS for Passport to Health and enhanced primary care case management.

ARM 37.86.5206

The proposed amendments to ARM 37.86.5206 remove a specific reference to disease management organizations to clarify that the department may contract with a health center certified as a Passport to Health provider that is capable of meeting the program service and supportive services requirements.

There is no fiscal impact as the result of these rule changes. The department estimates approximately 58,000 clients with Medicaid and 900 Passport providers will be affected by the Health Improvement Program.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Rhonda Lesofski, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail dphhslegal@mt.gov, and must be received no later than 5:00 p.m., May 28, 2010.

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/ John Koch
Rule Reviewer

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

Certified to the Secretary of State April 19, 2010.

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I	)	NOTICE OF PUBLIC
and II and amendment of ARM 42.12.101,	)	HEARING ON PROPOSED
42.12.106, 42.12.110, 42.12.111, 42.12.115,	)	ADOPTION AND
42.12.122, 42.12.128, 42.12.130, 42.12.133,	)	AMENDMENT
42.12.141, and 42.12.143 relating to liquor)	
license applications)	

TO: All Concerned Persons

1. On June 2, 2010, at 1:00 p.m. a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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., May 24, 2010, 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 rules do not replace or modify any section currently found in the Administrative Rules of Montana. The proposed new rules provide as follows:

NEW RULE I ON-PREMISES LICENSE SALES FOR OFF-PREMISES CONSUMPTION (1) An on-premises consumption retail licensee authorized to sell alcoholic beverages for off-premises consumption may sell alcoholic beverages for off-premises consumption only in their original packages or as an individual serving for off-premises consumption.

AUTH: 16-1-303, MCA

IMP: 16-1-302, 16-4-105, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to improve the understanding of liquor laws by liquor licensees and the public regarding what alcoholic beverages can be sold by on-premises consumption licensees for off-premises consumption to eliminate confusion. Alcoholic beverages must be sold in their original packages or in a limited single service size of 16 ounces or less. Beer containers known as "growlers" or large containers containing mixed beverages are not the original packaging and are not allowed to be sold for

off-premises consumption by on-premises consumption retail licensees. It should be noted this does not apply to brewers, as the manufacturer of the product they may sell for off-premises in any container. The department receives frequent questions regarding what is allowed to be sold for off-premises consumption by an on-premises licensee. This proposed rule is consistent with the response the department has provided to those questions.

NEW RULE II SACRAMENTAL WINE LICENSE (1) An establishment in Montana desiring to sell sacramental wine pursuant to 16-4-115, MCA, may apply to the department by submitting an off-premises wine license application accompanied by a \$200 fee, of which \$100 is a processing fee and \$100 is an annual license fee.

(2) An applicant must qualify for licensure under 16-4-401, MCA.

(3) The premises must meet suitability requirements for the retail sale of wine for off-premises consumption excluding the requirements to operate as a bona fide grocery store or pharmacy.

(4) This type of license is nontransferrable and not subject to the quota system as described in 16-4-105, MCA.

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

(6) Licensees must adhere to all laws and rules relating to the retail sale of off-premises consumption wine.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-316, 16-4-401, 16-5-501, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule II to reflect the statutory changes made by the 2009 Legislature with Senate Bill 511. Senate Bill 511 established a sacramental wine license for the retail sale of sacramental wine for religious purposes. Establishments located in Montana wishing to sell sacramental wine only, now have the ability to apply for an off-premises consumption sacramental license.

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

42.12.101 APPLICATION FOR LICENSE (1) remains the same.

(2) Applications for licenses shall be in the names of all persons with an ownership interest or to have an ownership interest in the business to be operated under the license. An owner of 10% or more or to who will have an ownership interest of 10% or more in the business to be operated under the license must meet the requirements as described in 16-4-401, MCA. If no single owner's interest is more than 10%, then persons whose combined ownership totals or will total 51% must meet the requirements as described in 16-4-401, MCA. The names of all such persons shall appear on the licenses. The disqualification of any one or more

applicants to hold the license disqualifies all.

(3) In addition to other information required on the application form, the department may require an applicant to submit all information necessary to determine qualifications, including, but not limited to, personal history statements and ~~authorization to access~~ state and federal income tax information for all persons who appear to have an ownership interest or control over the business operated or to be operated under the license; and, in the case of a license to be operated seasonally, the applicant may be required to submit sufficient information for the department to determine whether the criteria for seasonal operation as described in 16-3-310, MCA, and ARM 42.13.108 are met.

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

(5) through (8) remain the same.

(9) The provisions of this rule do not apply to:

(a) the transfer of a security interest in a licensed liquor operation; ~~or~~

(b) a transfer that would not result in a new owner or owner of less than 10% in the ~~licensed corporation, license owning 10% or more of the same licensed corporation license.~~ These transfers may occur without prior consent of the department. Immediate Written notice must be given to the department within 30 days in these cases in accordance with ARM 42.12.103; or

(c) the death of a licensee. In that case, the procedure outlined in ARM 42.12.204 applies.

(10) through (12) remain the same.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-210, 16-4-220, 16-4-401,
16-4-402, 16-4-414, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.101 to reflect the statutory amendments made by the 2007 Legislature with House Bill 113 to 16-4-401, MCA. Section 16-4-101, MCA, requires anyone with ownership interest in an alcohol beverage license of 10% or more to apply and qualify for a liquor license. The department is also proposing amendments to (3) to eliminate confusion and to ensure consistent treatment of liquor licensees in the application of liquor laws in regards to "seasonal" status. Section 16-3-310, MCA, and ARM 42.13.108 establish criteria for the granting of seasonal status, and the additional information submitted with the application will enable the department to determine whether such criteria are met. The department is further amending the rule to enhance liquor licensees' understanding that the provisions of this rule do not apply when there is a death of the licensee, and written notice of a transfer must be given within 30 days.

42.12.106 DEFINITIONS The following definitions apply to this subchapter:

(1) through (9) remain the same.

(10) "An individual serving" means a drink that is 16 ounces or less.

(11) "Licensee" means a person, partnership, association, or corporation holding a Montana retail liquor license, a and retail liquor operations located on an U.S. military installations, an alcoholic beverage manufacturer, a table wine distributor, or a beer wholesaler within Montana.

(11) and (12) remain the same but are renumbered (12) and (13).

~~(13)~~(14) "Noninstitutional lender" means a person who loans money to the applicant for a license or to the licensee other than a state or federally regulated banking or financial institution who loans money to an applicant for a license or to a licensee, a credit union, an investment company, or a development company as authorized under Title 32 MCA.

(14) and (15) remain the same but are renumbered (15) and (16).

(17) "Patio/Deck" means a specific area designated on a floor plan which shall be completely enclosed by at least a three-foot fence or wall, immediately adjacent to and accessible from inside the licensed premises.

(16) and (17) remain the same but are renumbered (18) and (19).

(20) "Retail Alcohol Beverages license" means a license operated by an establishment for the retail sale of alcoholic beverage for either on- or off-premises consumption but does not include brewery, winery, or distillery licenses.

~~(18)~~(21) "Restaurant," as it applies to an all-beverage license or a retail on-premises beer license, means a public eating establishment allowing for seated service for a minimum of 12 persons at tables or booths where the sale of food served is prepared on-site.

(22) "Sacramental wine" means wine that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

(19) remains the same but is renumbered (23).

(24) "Special event," as it relates to all special permits and catering, means a short, infrequent, out-of-the-ordinary occurrence such as a picnic, festival, reception, or sporting contest for which there is an outcome, conclusion, or result. For the purposes of this rule, a fair is considered a special event if it is a county, state, or regional fair that occurs no more than once per year, is held on a publicly-owned fairgrounds, and is officially sanctioned by a government entity.

(20) through (22) remain the same but are renumbered (25) through (27).

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.106 to include definitions of terms that are used in other rules contained in Chapter 12, subchapter 1 and to enhance the definition in existing terms for further understanding.

42.12.110 SERVICE OF NOTICES (1) A notice of proposed adverse action issued pursuant to 16-4-406, or 16-4-407, MCA, shall be served upon the licensee of

record or, in the case of an application for a new license, on the applicant or, in the case of an application for a new license, on the applicant by sending a copy of the notice to the licensee or applicant by certified mail to the mailing address on file with the department.

(2) remains the same.

(3) The licensee or applicant must respond to the department in writing within 20 days of service of the notice of proposed adverse action. Failure to respond will result in the enforcement of the proposed administrative action in the notice.

AUTH: 16-1-303, MCA

IMP: 16-4-406, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.110 to enhance liquor licensees' understanding and eliminate any confusion of the department's business practice on the time allowed by a licensee to respond to a proposed adverse action notice. Licensees have 20 days to respond to a proposed adverse action.

42.12.111 PROCESSING FEES (1) The following are the fees to be charged for processing endorsement and license applications:

(a) All-beverages license (including veterans' or fraternal)	\$200
(b) Catering endorsement (all-beverages, restaurant beer/ <u>and</u> wine, beer and wine.....	\$100
(c) All-beverages license with catering endorsement (when applied for concurrently)	\$200
(d) Retail on-premises beer license (including veterans' or fraternal).....	\$200
(e) Wine amendment (for use with existing on-premises retail beer license).....	\$100
(f) Restaurant beer <u>and</u> /wine license	\$200
(g) Retail on-premises beer license and wine amendment (when applied for concurrently)	\$200
(h) Retail off-premises beer license	\$100
(i) Retail off-premises table wine license.....	\$100
(j) Retail off-premises beer and table wine license (when applied for concurrently)	\$100
(k) Wholesale beer <u>Beer wholesaler</u> license	\$100
(l) Wholesale beer <u>Beer wholesaler</u> sub-warehouse license.....	\$100
(m) Wholesale table <u>Table wine distributor</u> license	\$100
(n) Wholesale table <u>Table wine distributor</u> sub-warehouse.....	\$100
(o) Wholesale beer <u>Beer Wholesaler</u> and table wine <u>distributor</u> license ...	\$100
(p) Brewer's license	\$100
(q) Beer importer's license	\$100
(r) Resort all-beverages license	\$200
(s) Winery/ wine importer <u>license</u>	\$100
(t) <u>Sacramental wine license ..</u>	\$100
(u) <u>Domestic distillery license</u>	\$100

(2) through (5) remain the same.

AUTH: 16-1-303, MCA;

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

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.111 to include all types of licenses in the processing fee schedule to match current department practice and reflect the statutory changes made by the 2009 Legislature with Senate Bill 511 creating a sacramental wine license. In addition the proposed rule changes the license types to reflect the statutory language for Restaurant Beer and Wine License and Beer Wholesaler License.

42.12.115 ASSESSMENT OF LICENSE RENEWAL LATE-PAYMENT PENALTY FEE - GROUNDS FOR WAIVER (1) The department will assess a license renewal late-payment ~~penalty~~ fee in all cases where a licensee fails to pay the license renewal fee on or before the due date. The renewal application and fee is timely filed and paid if mailed in an envelope postmarked by the United States Postal Service ~~prior to~~ on or before the due date. If the due date falls on a Saturday, Sunday, or state legal holiday, a postmark for the following business day or a payment received at the department on the following business day is timely.

(2) The department may waive a license renewal late-payment ~~penalty~~ fee assessment upon receipt of a written request by the licensee. The request must state the reason for late payment and be supported by documentation. A waiver of the license renewal late-payment ~~penalty~~ fee assessment shall be granted under the following conditions:

- (a) a department error;
- (b) the department mailed a license renewal notice less than two weeks prior to the due date;
- (c) a delay in payment caused by the death or serious illness of the licensee;
- (d) a United States Postal Service error;
- (e) a renewal application and fee was erroneously mailed to the Internal Revenue Service or ~~bureau of alcohol, tobacco, and firearms~~ Alcohol and Tobacco Tax and Trade Bureau;
- (f) a delay in payment due to bankruptcy or foreclosure action; or
- (g) the late payment is the only late payment within the most recent five consecutive years or since the license was acquired, whichever is less, and payment was received at the department within 30 days after the due date.

(3) A licensee's neglect, lack of funds, or ignorance of the law are not sufficient reasons for waiver of a license renewal late-payment ~~penalty~~ fee assessment.

AUTH: 16-1-303, MCA

IMP: 16-4-501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.115 to reflect the same statutory language found in 16-4-501, MCA, regarding late-payment fees and to clean up inconsistencies. The rule changes the wording

from late-payment penalty to late-payment fee. In addition, the proposed rule adds consistency with the timing of payment, on or before the due date. Subsection (e) was amended to mirror the title of the U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau.

42.12.122 DETERMINATION OF SUITABILITY OF PREMISES (1) remains the same.

(2) The premises ~~must~~ may be considered suitable for the retail sale of alcoholic beverages only if:

(a) it meets the standards of the ~~DPHHS~~ Department of Public Health and Human Services; the ~~d~~Department of ~~L~~Labor and ~~i~~Industry, ~~b~~Building ~~e~~Codes ~~b~~Bureau; and the ~~s~~State ~~f~~Fire ~~m~~Marshal's ~~e~~Office in the ~~f~~Fire ~~p~~Prevention and ~~i~~Investigation ~~b~~Bureau of the ~~d~~Department of ~~j~~Justice; or their delegated representatives;

(i) a license issued for off-premises consumption of beer and/or table wine must meet the standards for an establishment operated as a grocery store, or a drug store licensed as a pharmacy;

(ii) a license issued for on-premises consumption of beer must meet the standards for an establishment operated as a bar or tavern;

(iii) a license issued for on-premises consumption of beer and wine must meet the standards for an establishment operated as either a restaurant or a prepared food business, and must meet the requirements for a bar or tavern;

(iv) a license issued for on-premises consumption of all-alcoholic beverages must meet the requirements for a bar or tavern.

(b) the investigator can easily ~~ascertain~~ determine the type of alcoholic beverages business that is being conducted on the premises due to indoor and outdoor advertising, signage, and/or the general layout and atmosphere of the premises to be licensed. The ~~two~~ circumstances to be ~~ascertained~~ determined are:

(i) a beer and/or table wine license issued for off-premises consumption operates at a premises recognizable as a grocery store or a as a drugstore licensed as a pharmacy as defined in ARM 42.12.126;

(ii) a license issued for on-premises consumption, ~~operates at a premises recognizable as restaurant, bar, tavern, or other business directly related to the on-premises consumption of alcoholic beverages, such as a bowling alley, hotel, or gambling casino. The licensed premises must have a bar preparation area and sufficient seating to encourage patrons to remain on the premises and consume the alcoholic beverages sold by the drink. Sufficient seating must consist of not less than 12 seats at either a bar, not including a service bar as defined in ARM 42.12.401, or tables, booths, gaming areas, or any combination of the above; and with the exception of a restaurant beer and wine license, must comply with the following requirements:~~

(A) Must be operated at a premises clearly recognizable as a business established for the on-premises consumption of alcoholic beverages;

(B) The premises must include sufficient seating, consisting of not less than 12 seats with at least six seats at a bar and the other six seats at a bar, tables, booths, gaming areas, or any combination of the above. Seats at gaming machines are not included in the 12 seats required;

(C) For a beer only license, the premises must meet the standards for an establishment operated as a bar or tavern with designated space and accommodation for the individual sale and consumption of beer;

(D) For a beer and wine license, the premises must meet the standards for an establishment operated as either a restaurant or a prepared food business (not including a coffee shop or bakery); as an establishment with designated space and accommodations where, in consideration of payment, food is routinely furnished to the public; and must meet the requirements for a bar or tavern with designated space and accommodations for the individual sale and consumption of beer and wine;

(E) For a license issued for on-premises consumption of all-alcoholic beverages, the premises must meet the requirements for a bar; a tavern with designated space and accommodation for the individual sale and consumption of beer, wine, and distilled spirits; or a restaurant (not including a coffee shop or bakery) with designated space and accommodations where, in consideration of payment, food is routinely furnished to the public. The bar, tavern, or restaurant must offer individual sales of beer, wine, and distilled spirits by the drink;

(F) The licensee or employees must have direct involvement in the service of alcohol including, but not limited to, no alcoholic beverages can be provided to the customer through automatic dispensing or vending machines, self-service reach-in coolers, self-service opening shelving, or a self-service beer tap;

(G) The on-premises operation is physically separated from other businesses operated in the same building that are unrelated to the business of retail on-premises alcoholic beverages consumption, such as a grocery store, off-premise alcoholic beverage business, laundromat, clothing store, hardware store, flower shop, nursery, or preschool;

(H) Premises approved by the department prior to the 2010 effective date of this rule are subject to the conditions of the rule which were in effect at the time of approval. Any alteration is subject to the above premises requirements; and

(iii) a restaurant beer and wine licensed premises must have a service bar as defined in ARM 42.12.401, meet the requirements of (2)(b)(ii)(F) and (G), and sufficient seating as defined in 16-4-420, MCA;

(c) alcoholic beverages are advertised and displayed as being available for purchase;

(d) the premises is open for business on a regular basis so as not to be considered a license on nonuse status;

(e) any premises to be used for the on-premises consumption of alcoholic beverages may include a deck or patio, as long as the deck or patio is enclosed by at least a three-foot fence or wall immediately adjacent to and accessible from the inside licensed premises. The deck's or patio's exits shall be in compliance with fire regulations;

~~(e)~~(f) the layout of the premises allows for licensee- and/or employee-only control over the preparation, sale, service, and distribution of alcoholic beverages;

~~(f)~~(g) the investigator can verify to the department that the dimensions shown on the floor plan accurately represent the physical layout of the premises;

~~(g)~~(h) the applicant has demonstrated that adequate safeguards are in place to prevent the sale of alcoholic beverages to minors and intoxicated persons;

~~(h)~~(i) the premises to be used for the on-premises consumption of alcoholic beverages is physically separated from any business not directly related to the on-premises consumption of alcoholic beverages by four permanent walls. The walls must be floor to ceiling and shall not be moved without department approval of alterations to the premises pursuant to ARM 42.13.106. The premises can maintain inside access to each business conducted in the building through a doorway no larger than six feet wide with a door that can be closed and locked when not in use. Businesses directly related to the on-premises consumption of alcoholic beverages are a hotel, bowling alley, gambling casino, or restaurant; and

~~(i)~~(i) the provisions of (3) are not violated.

(3) In addition to the other requirements in this rule, the case of any license operated under a concession agreement, the premises can only be considered suitable for the retail sale of alcoholic beverages if the existence of a concession agreement and the names of the parties to the concession agreement are plainly disclosed to the public both inside and outside of the licensed premises by signage as follows:

(a) at least one sign inside the licensed premises, measuring not less than 8½ by 11 inches and with printing in a font size not smaller than 72, must be clearly visible to customers, and must plainly disclose:

(i) the existence of a concession agreement;

(ii) the names of the persons or entities which are party to the concession agreement and the assumed business names as filed with Secretary of State's Office, including which party is the licensee; and

(iii) the fact that the licensee is responsible for the service of alcoholic beverages within the premises; and

(b) at least one sign outside the license premises so the public can easily determine that alcoholic beverages are available.

(c) The requirements of (3)(a) and (b) regarding signage must be met for all licenses operating under a concession agreement and effective for any such license to be issued or renewed for the license year beginning July 1, 2011 or thereafter.

~~(3)~~(4) The premises cannot be considered suitable for the retail sale of alcoholic beverages if:

(a) local government zoning restrictions or ordinances prohibit the sale and/or consumption of alcohol at the location of the premises;

(b) the location is off regular police beats and cannot be properly policed by local authorities; and

~~(c) the service of alcohol is handled by the customer without the direct involvement of the licensee or employees;~~

~~(i) alcoholic beverages being provided the customer through automatic dispensing or vending machines, or~~

~~(ii) self-service beer tap;~~

~~(d) the on-premises operation is not physically separated from other businesses operated in the same building that are unrelated to the business of retail on-premises alcoholic beverages consumption, such as a grocery store, laundromat, clothing store, hardware store, flower shop, nursery, or preschool; and~~

~~(e) the operator of the alcoholic beverages business intends to conduct some or all of the sale of alcoholic beverages through the use of a drive-up window.~~

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

AUTH: 16-1-303, MCA

IMP: 16-3-311, 16-4-402, 16-4-404, 16-4-405, 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.122(2)(b)(ii) to ensure the understanding by applicants, licensees and the public of the suitability requirements for a premises to be licensed and where alcoholic beverages may be served for on-premises consumption to eliminate any confusion. On-premises liquor licenses are made available for the benefit of the public and to provide the alcohol available by the drink to the public. The department is also proposing to add (2)(e) and (3) to protect the public health and safety in the administration of liquor laws by adding language regarding a deck or patio and by notifying the public that alcoholic beverages are available on the premises and the licensee and concessionaire who are responsible for the service. The department has received complaints that there is not proper notice of who is operating the license and with the addition of (3) it provides transparency to the public and proper notice for the public's right to know.

The changes to the premises are for future applicants and do not apply to licensed premises already licensed.

42.12.128 CATERING ENDORSEMENT (1) and (2) remain the same.

(3) A catered event may only last for a maximum of three days, except that each licensee may have one special event per year that lasts up to seven days for a fair. A fair means a county, state, or regional fair that occurs no more than once per year, is held on a publicly-owned fairgrounds, and is officially sanctioned by a government entity.

(4) Licensees granted approval to cater such special events are subject to the provisions of 16-3-306, 16-4-111, and 16-4-204, MCA, and ARM 42.13.101.

~~(4)~~(5) Every licensee holding a catering endorsement shall report, on or before the 15th day of each month, those events the licensee catered in the previous month. The report shall include the date, time, the sponsor of the event, and place of the catered event. This report can be provided to the department in letter format.

AUTH: 16-1-103, 16-1-303, MCA

IMP: 16-3-103, 16-4-111, 16-4-204, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.128 to ensure consistent and equitable treatment in the application of liquor control laws by further outlining how a catering endorsement is to be used and the length of time an event can be catered. In addition, the department is requesting the sponsor of the event to be included in the monthly report for transparency purposes.

42.12.130 DETERMINATION OF LICENSE QUOTA AREAS (1) Any applicant applying to the department for a new license or transfer of location of an existing license under the quota limitations provided for under 16-4-105, ~~and 16-4-201, and 16-4-420~~, MCA, must submit to the department a sworn statement or

affidavit from the local county or city surveyor, or a private licensed land surveyor ~~or local government official~~ attesting to the location of the proposed premises.

(2) If the location of the proposed premises is not within the boundaries of an incorporated city, the ~~official~~ surveyor must attest to the exact distance from the nearest corporate boundary to the proposed premises as measured from official city or county plats.

(a) The distance must be measured by radial survey method from the nearest corporate city boundary to the nearest entrance of the proposed premises.

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

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-409, 16-4-420, 16-4-501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.130 to ensure consistent and equitable treatment of liquor licensees in the application of liquor control laws. The department is removing local government officials from attesting to the location of the licensed premises. The department requires a qualified surveyor to determine the exact location of a premises proposed for licensing and requires both a legal description and street address of the proposed premises.

42.12.133 CONCESSION AGREEMENTS (1) All new concession agreements must be submitted to the department for review and approval prior to their execution and/or effective date, and must set forth the following:

(a) the nature of the agreement is one that arises from a mutually beneficial situation only;

(b) the agreement gives the licensee possessory interest in the concessioned premises;

(c) a copy of the licensee's amended floor plan, including the new service area, ~~will accompany the agreement~~;

(d) the licensee is responsible for the sales and service of all alcoholic beverages;

(e) the parties may share the employees. In the event of shared employees, the licensee must retain the right to discipline or otherwise sanction any employee in relation to the service of alcohol. Any violation of liquor law is the sole responsibility of the licensee;

(f) the compensation to be paid for shared employees. The compensation may not be based on a percentage of alcohol sales;

(g) the nonlicensed entity cannot order, or otherwise purchase, any alcoholic beverage product from a wholesaler or agency liquor store;

~~(g)(h)~~ the agreement must include language that allows the licensee to terminate the agreement without cause; and

~~(h)(i)~~ that all the proceeds from the sale of alcoholic beverages are the property of the licensee; and

(i) meet the suitability rule requirements for concession agreements in ARM 42.12.122.

(2) The department, upon receipt of the concession agreement and any

supporting documentation, will advise the licensee within seven working days of approval or denial of the agreement unless further documentation or an audit review is necessary. Upon approval of the agreement, the license will reflect language that the licensee is also serving alcoholic beverages in the establishment.

(3) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-3-305, 16-3-311, 16-4-401, 16-4-402, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.133 to require concession agreements to include that compensation be paid for shared employees. The proposed rule notifies licensee and concessionaries that compensation may not be based on a percentage of alcohol sales. Concession agreements are agreements under which an all-beverage liquor or an on-premises consumption beer licensee uses their license in an otherwise nonlicensed establishment within the confines of their current building. For example, in the case of Chili's and Macaroni Grill in Helena - where Chili's owns the license and has a concession agreement with Macaroni Grill to serve alcoholic beverages. Subsection (1)(j) is added to enhance liquor licensee understanding of the signage requirements in the suitability of premises rule 42.12.122. Section (2) is amended because in some cases it is necessary to ask for further documentation when the agreement is not complete or an audit review is conducted by the Department of Justice, which may extend beyond the seven working days.

42.12.141 CORPORATE LICENSES LICENSED ENTITIES (1) No alcoholic beverages license shall be issued to ~~a Montana corporation~~ an entity unless the following requirements are met:

(a) ~~The corporation was organized and has existed as a Montana corporation or the entity~~ has been authorized to do business in Montana prior to making application for an alcoholic beverages license; and

(b) ~~corporate the~~ application must be accompanied by a copy of the ~~corporation's entity's certificate of incorporation or certificate of good standing~~ Certificate of Existence for Corporations and LLCs or a copy of the entity's Certificate of Fact for all other types of entities issued within the last six months by the Montana Secretary of State; and

(c) the applicant must be current on all filings and payments related to Montana income, corporation, withholding, business, and other taxes.

AUTH: 16-1-303, MCA

IMP: 16-4-401, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.141 to reflect the statutory amendments made with House Bill 113 in the 2007 Legislature to 16-4-401, MCA. Section 16-4-401, MCA, allows out-of-state residents to apply for liquor licenses and refers to the term "an entity" versus "corporations" to reflect all types of common businesses. The rule amendment changes "Montana corporation" and replaces it with "an entity". In addition, the department is proposing

to amend to include a requirement for applicants to be current on all income, corporation, withholding, and business taxes and filings to reflect the department's current policy when processing licensing applications to improve applicant's ease and convenience in meeting their responsibilities under the law.

42.12.143 RESTRICTION ON INTEREST IN OTHER LICENSES (1) Except as provided in 16-4-205, MCA, any person ~~owning stock in a corporation which owns holding an ownership interest in~~ an all-beverages license issued pursuant to 16-4-401, MCA, is not qualified to own an interest, ~~either as owner, partner, or stockholder~~, in:

- (a) another all-beverages license in Montana;
- (b) ~~wholesale beer~~ a Montana beer wholesaler license; or;
- (c) a Montana table wine distributor's license;
- (d) an alcoholic beverage manufacturer; or
- (e) an importer of alcoholic beverages.

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

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

(2)(3) Any person ~~owning stock in a corporation which owns~~ holding an ownership interest in a ~~wholesale beer~~ wholesaler license issued pursuant to 16-4-401, MCA is not qualified to own an interest, ~~either as owner, partner, or stockholder~~ in:

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

(3)(4) Any person ~~owning stock in a corporation which owns~~ holding an ownership interest in a table wine distributor's license issued pursuant to 16-4-401, MCA is not qualified to own an interest, ~~either as owner, partner, or stockholder~~ in:

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

(5) Any person holding an ownership interest in a Montana alcoholic beverage manufacturer pursuant to 16-4-401, MCA is not qualified to own interest in a:

- (a) Montana retail alcoholic beverage license;
- (b) Montana beer wholesaler license; or
- (c) Montana table wine distributor license.

AUTH: 16-1-303, MCA

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

REASONABLE NECESSITY: The department is proposing to amend ARM

42.12.143 to adjust the language of the rule to reflect the statutory changes to 16-4-401, MCA. Section 16-4-401, MCA, changes included allowing out-of-state residents to apply for liquor licenses and updating language from "corporations" to "an entity" to reflect all types of common businesses. In addition, the proposed amendments are to improve the understanding of the separation requirements of the three-tier system. The three-tier system is set into place to prevent coercion and inducement of alcohol sales. The rule shores up the three-tier system in Montana and ensures the separation is understandable to the public.

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: 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 and must be received no later than June 11, 2010.

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

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices 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 5 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.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor of HB 113 (2007 Session), Representative McChesney was contacted on March 6, 2010, by electronic mail; and the primary sponsor of SB 511 (2009 Session), Senator Tropila was also contacted on March 6, 2010, by electronic mail.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State April 19, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I	)	NOTICE OF PUBLIC
and amendment of ARM 42.12.312,	)	HEARING ON PROPOSED
42.12.313, and 42.12.323 relating to special	)	ADOPTION AND
licenses and permits	)	AMENDMENT

TO: All Concerned Persons

1. On June 2, 2010, at 2:00 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the adoption and amendment of the above-stated rules.

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., May 24, 2010, 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) 444-3696; 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 RESTAURANT BEER AND WINE SERVICE OPERATIONS

(1) All beer and wine must only be served to patrons who order food or are waiting to be seated.

(2) All beer and wine purchases must be stated on the food bill. Beer or wine may not be purchased separately.

(3) Beer or wine may not be sold, offered for sale, or given away before 11:00 a.m. or after 11:00 p.m.

(4) On-premises consumption and possession shall not be permitted before 11:00 a.m. or after 11:00 p.m. The licensee shall be responsible for removing all alcoholic beverages from patrons' possession prior to 11:00 p.m., in order to comply with this provision.

(5) Beer and wine may not be sold for off-premises consumption.

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to adopt New Rule I to enhance the liquor licensee's and the public's understanding of the service

operations of restaurant beer and wine licenses in Montana.

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

42.12.312 LIQUOR MANUFACTURER'S LICENSE (1) Any person or corporation, licensed to operate under the provisions of the laws of the United States, may apply to the department for a license to engage in the manufacture of liquor in the state of Montana. ~~The application must be accompanied by a \$600 license fee, to be paid annually upon renewal of the license.~~ The applicant shall submit satisfactory evidence of good moral character and that he the applicant is qualified to operate under the laws of the United States.

(2) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-1-201, 16-4-312, 16-4-501, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.312 by removing the license fee because the fee is included in 16-4-501, MCA, and it is not necessary to duplicate the fee in an administrative rule.

42.12.313 PUBLIC WINE OR BEER TASTINGS (1) ~~Wine~~ Beer or wine tastings must be conducted by a an on-premises consumption retail licensee, special permittee, or catering permittee.

(2) In no case can a wine distributor, a beer wholesaler, a winery/wine importer or a brewer/beer importer sponsor a wine or beer tasting other than at:

(a) a licensed retail premises that permits on-premises consumption except for ~~or other than a domestic winery as allowed under 16-3-411, MCA; or~~

(b) a brewery as allowed under 16-3-213, MCA.

(3) A wine distributor, a beer wholesaler, a wine importer, or a beer importer sponsoring a tasting:

(a) must purchase the products to be used for the tasting from the on-premises consumption retail licensee at the ordinary retail price; and

(b) can participate only by providing advice or information about the products sampled.

(4) A winery or brewer sponsoring a tasting is required to comply with (3). In addition, the winery or brewer can participate in serving the product.

(5) An off-premises retail licensee may only participate in a wine tasting conducted by an on-premises consumption retail licensee by providing advice or information about the products being sampled. The off-premises consumption licensee may take orders for products to be picked up and paid for at the off-premises consumption licensee's premises.

(6) All beer and wine provided to the public at a tasting conducted by an on-premises consumption licensee must be purchased by the on-premises consumption retail licensee from a licensed distributor, wholesaler, brewery, or winery. Beer and wine must be served by the on-premises consumption licensee with the exception of beer and wine manufactures. Beer or wine may not be provided by another retail

licensee.

~~(3)~~(7) This rule shall not apply to beer or wine tastings which are held in a private home wherein no consideration, remuneration, contribution, donation, gift, or any other money or thing of value is solicited or charged for entry or attendance and which do not violate the provisions of 16-6-306, MCA.

AUTH: 16-1-303, MCA

IMP: 16-3-213, 16-3-411, 16-4-105, 16-6-306, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.313 to increase the understanding by liquor licensees and the public on how and where beer and/or wine tastings may be conducted. Wine and/or beer tastings conducted at on-premises consumption establishments and breweries are allowed according to the law. The rule outlines how table wine distributors, beer wholesalers, and off-premises retailers can be involved in the tastings. The department had past violation cases where off-premises retailers stated that the rules were not clear on this subject matter. The department has made a good faith effort to respond to the complaint.

Section (1) outlines that only on-premises consumption retail licensees can conduct tastings.

Section (2) adds the provision that brewers are allowed to provide beer tastings under 16-3-213, MCA.

Section (3) addresses those allowed to sponsor the tastings must purchase the beer and/or wine from the on-premises licensee but may not pay more than the normal price.

In addition, the rule outlines that those allowed to sponsor the tasting can only provide advice or information about the product. Only wineries and brewers are allowed to serve the product. Distributors and wholesalers are not allowed to assist in serving of the product.

Section (5) addresses off-premises licenses can only participate in the tasting by providing advice or information on the samples. They may take orders, but the orders must be picked up and paid for at the off-premises licensed location.

Section (6) states that all products at the tasting must be purchased by the on-premises licensees from a licensed distributor, wholesaler, brewer, or winery.

Section (7) adds "beer" to the language to make it consistent for all the sections in this rule.

42.12.323 PERMISSIBLE AND PROHIBITED SPECIAL PERMIT ACTIVITIES

(1) remains the same.

(2) A special event may only last for a maximum of three days except that each permit holder may have one special event per year that last up to seven days for a fair if it is a county, state, or regional fair that occurs no more than once per year, is held on a publicly-owned fairgrounds, and is officially sanctioned by a government entity.

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

AUTH: 16-1-303, MCA

IMP: 16-3-103, 16-3-241, 16-4-301, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.323 to ensure consistent and equitable treatment of liquor control laws by adding parameters for a special permit and the length of a special event. Without parameters a special event could in fact be a season; for example, the summer. These permits were established to allow for the sale of alcohol on an unlicensed premises for a designated official event.

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: 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 and must be received no later than June 11, 2010.

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

7. An electronic copy of this Notice of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

8. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notices 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 5 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.

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

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State April 19, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC
42.12.401, 42.12.405, 42.12.406, 42.12.408,	)	HEARING ON PROPOSED
42.12.412, and 42.12.414 relating to	)	AMENDMENT
restaurant beer and wine licenses and lottery)	
process)	

TO: All Concerned Persons

1. On June 2, 2010, at 2:30 p.m., a public hearing will be held in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, at Helena, Montana, to consider the amendment of the above-stated rules.

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., May 24, 2010, 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) 444-3696; or e-mail canderson@mt.gov.

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

42.12.401 DEFINITIONS The following terms will be used in this subchapter.

(1) The following terms apply to all lottery processes:

(a) "Available license" means a newly created license which can be issued by the department or an existing license that can be transferred between quota areas because of:

(i) a population increase verified by the most recent census population figures; or

(ii) a lapse or revocation of an existing license.

(b) "Conditional approval letter" is defined in ARM 42.12.106.

(c) "Continuously open to the public" means open during designated business hours on a weekly basis with no interruption in those business hours. Documented exceptions not causing unreasonable closure that would be considered are:

(i) acts of nature, such as a flood, earthquake, tornado, or blizzard;

(ii) other acts beyond the owner's control; or

(iii) a remodeling project of no greater than a one-month duration.

(d) "Existing beer/wine/all-beverages license" means either an on-premises or off-premises consumption retail license that is either currently being used at the

location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the department.

(e) "Irrevocable letter of credit" means a letter of credit in which the issuing bank guarantees that it will not withdraw the credit or cancel the letter. A letter of credit may not be modified or revoked without the customer's consent.

(d)(f) "Lottery" means an objective mechanical process to randomly select persons eligible to submit applications for available licenses.

(e)(g) "Lottery application" means a brief one-sheet application for an available license stating the applicant's name, mailing address, type of license, and quota area. If more lottery applications than the number of licenses available for any given quota area have been submitted, a lottery will be held.

(f)(h) "Person" means any individual, firm, partnership, limited liability company, corporation, or association.

(2) The following terms specifically apply to the restaurant beer/ and wine lottery process licenses:

(a) "Existing beer/wine/all beverages license" means either an on-premises or off-premises retail license that is either currently being used at the location in question, or has been approved for nonuse status, or is a license for which a sale has occurred or is pending but not approved by the department.

(i) A license in nonuse status does not constitute an existing license if the licensee does not own or control the applicant entity, the applicant and the licensee are not related, and the applicant and licensee are independent business entities. "Evening dinner meal" means individually priced meals served at least four days a week for at least two hours a day between the hours of 5 p.m. and 11 p.m.

(b) "Existing preference Preference" means a preference that will be given to a restaurant owner/operator that has either existed for one year prior to the lottery deadline or was an unsuccessful lottery applicant from a previous priority provided to a restaurant beer/ and wine lottery applicant based upon eligibility. Either circumstance will give it a priority in the final ranking. An applicant with both preferences must be awarded a license before any applicant with only one preference. However, an existing preference will not supersede the limits within any quota area on licenses of restaurants with a seating capacity of 101 or more persons.

(c) "Restaurant beer/ and wine license" means a license which must be attached to a restaurant and can only be used in conjunction with a restaurant where beer and wine can only be served to patrons who order food service or who are waiting to be seated. The licensee must agree to forego any kind of gambling, maintain 65% of business income from food sales, and must only have table service of beer and wine to those customers who are eating or waiting to be seated to eat.

(d) "Seasonal restaurant" means one that is only open during one, two, or three seasons of any year. Seasonal restaurants can be open any part of a season or the full season, as long as the restaurant is not open year-round.

(e) "Service bar" means an area where alcoholic beverages are stored and prepared for table service delivery to patrons for on-premises consumption. Consumption of alcoholic beverages by patrons or any other person is not permitted at the service bar.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.401 to enhance the public's understanding of the lottery and restaurant beer and wine (RBW) license terms. The amendment also seeks to conform these rules to rulemaking standards by removing more detailed language from the definitions and placing that language in other sections of the rules. These amendments are necessary to bring the rule into compliance with changes made by the 2007 Legislature in House Bill 633. In addition, the rule changes are necessary based on the changes to the restaurant beer and wine license lottery preferences and definition changes in House Bill 195 of the 2009 legislative session.

42.12.405 RESTAURANT BEER AND WINE LICENSE APPLICATION FEES

(1) and (2) remain the same.

(3) If an application is terminated, the \$100 processing fee will be retained by the department.

(4) remains the same.

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.405 because the processing fee for the license appears in ARM 42.12.111 and there is no need for duplication.

42.12.406 LOTTERY APPLICATION PROCESS (1) through (3) remain the same.

(4) Lottery applications must state the name of the applicant(s). All potential owners ~~including all stockholders of a corporation, all partners of a partnership, and all members of a limited liability company~~ with an ownership interest of 10% or more must be noted on the initial lottery application form as required for an applicant in ARM 42.12.101.

(5) ~~If a retail license is currently issued to the location, no restaurant beer/wine license will be considered for this location.~~ For the purposes of 16-4-204, MCA, the previous 12 months is considered the period from previous lottery publications until the new estimated census in July. Only one application per lottery offering per year is allowed for licenses issued by lottery under 16-4-204, MCA.

(6) ~~Seating capacity will be a factor in determining the allocation of the restaurant beer/wine licenses and the appropriate fees.~~

(a) ~~Using the following categories, a lottery application for the restaurant beer/wine lottery must state the exact seating capacity of the restaurant:~~

~~(i) 60 persons or less;~~

~~(ii) 61 to 100 persons; or~~

~~(iii) 101 or more persons.~~

~~(7) Lottery applications to be included in the license lotteries can be acquired through the department.~~

~~(8)~~ Answers to questions in the initial lottery application must be identical to answers in the subsequent application for a license. Failure to produce identical information on both documents will cause disqualification of the applicant(s).

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

(8) The following applies only to restaurant beer and wine lottery applicants:

(a) if any on-premises retail license is currently issued to the location, no restaurant beer and wine license will be considered for this location;

(b) seating capacity will be a factor in determining the allocation of the restaurant beer and wine licenses and the appropriate fees; and

(c) using the following categories, a lottery application for the restaurant beer and wine lottery must state the exact seating capacity of the restaurant:

(i) 60 persons or less;

(ii) 61 to 100 persons; or

(iii) 101 or more persons.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.406 to clearly outline the lottery process to the public and to address legislative changes made by the 2007 Legislature in Senate Bill 296 and House Bill 113. The proposed amendments separate the requirements for restaurant beer and wine lotteries and lotteries for other licenses awarded through the lottery process.

The amendment to (4) addresses changes from HB 113 (2007). House Bill 113 updated statutory language to reflect all types of common business entities not just corporations.

The current language in (5) was moved to the new subsection to make the rule more easily understood.

New (5) addresses new statutory changes from legislative changes made by the 2007 Legislature in Senate Bill 296. Senate Bill 296 places requirements on the lottery process for licenses issued by lottery under 16-4-204, MCA.

42.12.408 FINAL APPLICATION PROCESS FOLLOWING SUCCESSFUL APPOINTMENT UNDER A LOTTERY (1) The application process for a restaurant beer/ and wine license is the same as the process outlined in subchapter 1 of this chapter except for the initial licensing fee which ranges from \$5,000 to \$20,000 depending on the ~~size~~ seating capacity of the restaurant.

(2) Applicants must also meet:

(a) premises suitability requirements;

(b) investigation requirements; ~~and~~

(c) public notice requirements; and

(d) eligibility claimed for a preference.

(3) remains the same.

(4) For on-premises retail consumption beer license applications with premises that are under construction or are being remodeled, the applicant must complete the premises within a reasonable time as stated in ARM 42.12.207.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to add ARM 42.12.408(2)(d) to include the existing requirements of the law. If the applicant claims a preference in the lottery, the department will verify that the applicant meets the eligibility claimed for the preference prior to the application being approved.

New (4) is being proposed to include the time period a successful lottery applicant has to complete their licensed premises. The licenses are available for the benefit of the public and therefore the premises needs to be put into use within a reasonable time as outlined in ARM 42.12.207 and consistent with other licensed premises construction and remodel requirements.

42.12.412 WHEN LOTTERY WILL BE HELD (1) and (2) remain the same.

(3) The lottery process will be verified by a third party, not employed or associated with by the department as well as by the public who may attend the lottery drawings.

(4) remains the same.

~~(5) In the case of a restaurant beer/wine application, if the number of larger restaurants with seating of 101 or more exceeds the 25% maximum limit for this size restaurant a lottery will be held in order to determine which applicant will be afforded the opportunity to apply for the license. Each applicant must still meet minimum qualifications for applicants of the restaurant beer/wine license.~~

AUTH: 16-1-303, MCA

IMP: 16-4-420, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.412(3) because the department will contract with another state agency to be the third party to verify lotteries. In addition, the department is proposing to delete ARM 42.12.412(5). By removing this rule language and providing all lottery applicants equal opportunity, the department believes it provides more flexibility for restaurant business opportunities within Montana. A successful lottery applicant who initially sought a license with seating of 101 or more will be afforded the opportunity to apply for a license of lesser seating if the 25% maximum for licenses with seating of 101 or more has been met.

42.12.414 HOW APPLICANTS WILL BE CHOSEN (1) remains the same.

~~(2) In addition, successful applicants for a restaurant beer/wine license will be chosen based upon:~~

~~(a) qualified seating capacity:~~

~~(i) 60 persons or less;~~

~~(ii) 61 to 100 persons; or~~

~~(iii) 101 or more persons; and~~

~~(b) whether the applicant is eligible for an existing preference.~~

~~(3) The department will construct a list of the applicants in the order in which they were drawn in the lottery.~~

(a) For a restaurant beer/ and wine lottery applicant, the department personnel will ~~then look to see, determine~~ within this ordering, which ~~restaurants applicants~~ have an existing claimed a preference ~~and the seating capacity of the restaurant.~~

(b) A preference must be given to any applicant who:

(i) does not have a restaurant beer and wine license or a retail beer license in any quota area; and

(ii) operates a restaurant for at least 12 months immediately prior to filing of an application in that quota area. This preference will be verified at the time of license application.

(c) An applicant with a preference will be given a priority in the final ranking.

(d) A preference will not supersede the limits within any quota area on licenses of restaurants with a seating capacity of 101 or more persons.

~~(b)(e)~~ A final ranking of applicants will then be made.

~~(e)(f)~~ The department will not issue to the restaurants shown in (2)(a)(iii) with a seating capacity greater than 101 more than 25% of the available restaurant beer/ and wine licenses in any given quota area. This may result in a quota area not being able to immediately award all of its available restaurant beer/ and wine licenses. This could also result in larger restaurants who have received a preference being unable to receive a restaurant beer/ and wine license for seating capacity greater than 101 if many larger restaurants apply to the initial lottery in a given area.

(g) A successful lottery applicant that requested to have a restaurant with seating capacity greater than 101 but the seating quota is full may elect to apply for a license with less seating capacity.

~~(4)(3)~~ A successful applicant cannot sell his ranking nor can the applicant transfer his ranking to another.

AUTH: 16-1-303, MCA

IMP: 16-4-105, 16-4-201, 16-4-204, 16-4-420, 16-4-502, MCA

REASONABLE NECESSITY: The department is proposing to amend ARM 42.12.414 to enhance the public and applicant's understanding on how lotteries are conducted, preferences will be applied, and the 25% seating quota is administered for seating capacity over 101.

The department is proposing to delete the language in (2) to allow more flexibility and fairness to restaurant business. A successful lottery applicant who initially sought a license with seating of 101 or more will be afforded the opportunity to apply for a license of lesser seating if the maximum licenses have been met for seating over 101. New (2) is necessary to bring the rule into compliance with changes to the lottery preferences made by the 2009 Legislature in House Bill 195.

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) 444-3696; or e-mail canderson@mt.gov and must be received no later than June 11, 2010.

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 of Public Hearing is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

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 notices 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) 444-3696, 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 bill sponsor for SB 296 (2007), Senator Weinberg was notified by regular mail on August 10, 2007. The primary following bill sponsors were all notified by electronic mail on March 6, 2010: Representative McChesney for HB 113 (2007; Representative Dutton for HB 633 (2007); and Representative Hamilton for HB 195 (2009).

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State April 19, 2010

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION,
Rules I through V (ARM 2.21.6612,	)	AMENDMENT, AND AMENDMENT
2.21.6613, 2.21.6614, 2.21.6616, and	)	AND TRANSFER
2.21.6617), the amendment of ARM)	
2.21.6606, 2.21.6608, 2.21.6622, and)	
the amendment and transfer of ARM)	
2.21.6611 (2.21.6615) pertaining to)	
employee records management)	

TO: All Concerned Persons

1. On February 11, 2010, the department published MAR Notice No. 2-21-423 regarding a public hearing on the proposed adoption, amendment, and amendment and transfer of the above-stated rules at page 256 of the 2010 Montana Administrative Register, Issue No. 3.

2. On March 11, 2010, the department held a public hearing on the proposed adoption, amendment, and amendment and transfer.

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: The department received a comment suggesting the language in New Rule I(1)(a) be revised to differentiate between applicant and employee records. The commentor also expressed concern about employee references being considered employee personnel records.

RESPONSE #1: The department will not address applicant records in this rule. These rules pertain only to employee personnel records. Applicant records, including preemployment information, do not become employee personnel records until an applicant is hired and becomes an employee. The department will not remove references from this rule. The rule pertains only to references for hired employees. All preemployment information for hired employees is an employee record.

COMMENT #2: The department received a comment requesting the language in New Rule V(1) be revised to state that employee records may also be retained within the agency for the seven additional years.

RESPONSE #2: The department agrees and is making changes to (1).

COMMENT #3: The department received a comment suggesting New Rule IV(1) and ARM 2.21.6611 (2.21.6615(10)) be revised to specify the authorized

users.

RESPONSE #3: The department will not change these rules. Agency management may specify the authorized users in the agency policy.

4. The department has adopted New Rule I (ARM 2.21.6612), New Rule II (ARM 2.21.6613), New Rule III (ARM 2.21.6614), and New Rule IV (ARM 2.21.6616) as proposed.

5. The department has amended ARM 2.21.6606, 2.21.6608, and 2.21.6622 as proposed.

6. The department and amended and transferred ARM 2.21.6611 to 2.21.6615 as proposed.

7. The department has adopted New Rule V (ARM 2.21.6617) as proposed, but with the following changes, stricken matter interlined, new matter underlined:

NEW RULE V (2.21.6617) EMPLOYEE PERSONNEL RECORDS
RETENTION (1) The Montana Secretary of State's Records and Information Management Division maintains a records retention schedule for payroll and personnel records. Most employee personnel records must be kept in the employer's office for three years after an employee terminates employment, ~~and~~, The records must then be transferred to the state records center or retained within the agency for seven additional years. Some personnel records have different retention requirements, which are listed in the schedule.

(2) remains as proposed.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State April 19, 2010.

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 2.21.6702, 2.21.6703, 2.21.6708,)
and 2.21.6709 pertaining to the)
Incentive Award Program)

TO: All Concerned Persons

1. On March 11, 2010, the department published MAR Notice No. 2-21-427 regarding the proposed amendment of the above-stated rules at page 590 of the 2010 Montana Administrative Register, Issue No. 5.

2. The department has thoroughly considered the comment received. A summary of the comment received and the department's response follows:

COMMENT #1: The department received a suggestion to distinguish and separate the Incentive Award Program to designate one program for the citizens of Montana and one program for employees working within state government.

RESPONSE #1: The department did not make this change. The department is charged to create an employee incentive program in accordance with 2-18-1102, MCA. The eligibility for the award is contained in 2-18-1105, MCA, which states, "an employee, a group or team of employees, or a nonemployee is eligible for an incentive award."

3. The department has amended ARM 2.21.6702, 2.21.6703, 2.21.6708, and 2.21.6709 exactly as proposed.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

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

Certified to the Secretary of State April 19, 2010.

BEFORE THE DEPARTMENT OF COMMERCE
OF THE STATE OF MONTANA

In the matter of the adoption of New)
Rule I pertaining to the submission)
and review of applications for funding)
under the Treasure State Endowment)
Program)

NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 14, 2010, the Department of Commerce published MAR Notice No. 8-94-80 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 4 of the 2010 Montana Administrative Register, Issue Number 1.
2. The department has adopted the above-stated rule as proposed: New Rule I (8.94.3815).
3. No comments or testimony were received.

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

/s/ ANTHONY J. PREITE
ANTHONY J. PREITE
Director
Department of Commerce

Certified to the Secretary of State April 19, 2010.

BEFORE THE MONTANA STATE LIBRARY
OF THE STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 10.102.4001, 10.102.5102,)
10.102.5105, and 10.102.5106)
pertaining to resource sharing and)
allocation of federation funding)

TO: All Concerned Persons

1. On January 14, 2010 the Montana State Library published MAR Notice No. 10-10-100 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 6 of the 2010 Montana Administrative Register, Issue Number 1.

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: The Clancy branch of the Jefferson County Library System benefits a large variety of people and those benefits are made possible by their membership in the Montana Shared Catalog (MSC). Resource sharing is very important and they support money being directed to MSC to further the impact.

RESPONSE #1: Thank you for your support of the MSC in the recommended changes. This comment and the following ones are reflective of the comments and suggestions received throughout the repurposing of Interlibrary Loan Reimbursement Program monies discussion. The Fulfillment Task Force offered the compromise solution that 50 percent of the monies be repurposed for the Montana Shared Catalog (MSC) and 50 percent be repurposed for the statewide OCLC Group Services contract and payment. Both the MSC and OCLC are recognized as strong interlibrary resource sharing tools benefitting Montana libraries, and more importantly, library users. Neither the MSC nor the OCLC Group Services contract currently directly benefits all Montana libraries. MSC represents over 100 Montana libraries and the OCLC contract currently involves approximately 250 Montana libraries. The MSC is a Montana-grown cooperative while OCLC is a national bibliographic cooperative. Both the MSC and OCLC are available for other Montana libraries to join if they so desire and have the funds to do so. The 50/50 compromise was made so both of these important statewide resource sharing tools could continue to move forward to help as many Montana libraries as possible.

COMMENT #2: The MSC Executive Committee representative spoke for all shared catalog libraries in support of the changes.

RESPONSE #2: Thank you for your support of the 50/50 distribution for the MSC and the OCLC contract.

COMMENT #3: MSC is irreplaceable but with these proposed amendments money that is planned to be given to all libraries would go directly to benefit just some. Encouraging membership is not a good reason to redirect the money. All libraries will be impacted by OCLC and so all money should go there.

RESPONSE #3: Thank you for your support of the OCLC contract in these recommended changes.

/s/ Darlene Staffeldt
Darlene Staffeldt
Rule Reviewer

/s/ Donald Allen
Donald Allen
Chairman
Montana State Library

Certified to the Secretary of State April 19, 2010.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I and the amendment of ARM	)	AMENDMENT
10.16.3022, 10.16.3122, 10.16.3320,)	
10.16.3324, 10.16.3346, 10.16.3505)	
through 10.16.3507, 10.16.3512,)	
10.16.3560, 10.16.3660, and)	
10.16.3904 pertaining to special)	
education)	

TO: All Concerned Persons

1. On February 25, 2010, the Superintendent of Public Instruction published MAR Notice No. 10-16-119 pertaining to the public hearing on the proposed adoption and amendment of the above-stated rules at page 473 of the 2010 Montana Administrative Register, Issue Number 4.

2. The Superintendent has adopted the above stated rule as proposed: New Rule I (ARM 10.16.3505A).

3. The Superintendent has amended ARM 10.16.3022, 10.16.3122, 10.16.3320, 10.16.3324, 10.16.3346, 10.16.3505, 10.16.3507, 10.16.3512, 10.16.3560, and 10.16.3660 as proposed.

4. The Superintendent has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

10.16.3506 VOLUNTARY MEDIATION (1) remains as proposed.

(2) Mediation may not be used in the case of revocation of parental, consent for placement.

(3) through (6) remain as proposed.

10.16.3904 PROCEDURES FOR APPROVAL (1) A draft of a new or amended interlocal agreement shall be submitted to the Superintendent of Public Instruction for review and approval ~~on or before January 1.~~ Upon approval, the cooperative contract shall be filed with the county Clerk and Recorder of the county or counties in which the school districts involved are located and with the Secretary of State.

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

COMMENT # 1: Steve Gettel, Superintendent of the Montana School for the Deaf and the Blind, submitted three comments in connection with the amendments to ARM 10.16.3022. Mr. Gettel is concerned that the rule excludes children with other vision losses that may be significant. Mr. Gettel requested that if the Superintendent is not going to expand the definition, the rule not be amended at all.

RESPONSE # 1: The Superintendent thanks Mr. Gettel for his comments. ARM 10.16.3022 was amended to conform to the statutory language of 20-7-471, MCA. To not amend the rule would be inconsistent with statutory language.

COMMENT # 2: Frank Podobnik of the Office of Public Instruction suggested striking "on or before January 1" from ARM 10.16.3904(1) because there is no need for a timeline.

RESPONSE # 2: The Superintendent thanks Mr. Podobnik for his comment. The rule has been amended as suggested.

COMMENT #3: Jeremy Gersovitz, Legislative Attorney commented that the comma after "parental" and before "consent" in ARM 10.16.3506(2) should be removed.

RESPONSE #3: The Superintendent thanks Mr. Gersovitz for his comment. The rule has been amended as suggested.

/s/ Ann Gilkey
Ann Gilkey
Rule Reviewer

/s/ Denise Juneau
Denise Juneau
Superintendent of Public Instruction

Certified to the Secretary of State April 19, 2010.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
AND THE BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECTS
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.101.413 renewal dates and)
requirements and 24.114.401 fee)
schedule)

TO: All Concerned Persons

1. On January 28, 2010, the Department of Labor and Industry (department) and the Board of Architects and Landscape Architects (board) published MAR notice no. 24-114-31 regarding the public hearing on the proposed amendment of the above-stated rules, at page 200 of the 2010 Montana Administrative Register, issue no. 2.

2. On February 18, 2010, a public hearing was held on the proposed amendment of the above-stated rules in Helena. A few comments were received by the February 26, 2010 deadline.

3. The board has thoroughly considered the comments received. A summary of the comments received and the board's response are as follows:

COMMENT: Two commenters opposed changing the biennial renewal to an annual renewal cycle. The commenters stated that the reasons provided in the notice did not justify the change and that administrative costs would increase due to sending renewal notices every year, rather than every other year. A commenter questioned whether the renewal fee for annual would be half as much as biennial renewal and another commenter expressed general support for the amendments.

RESPONSE: As noted in the proposal notice, the annual renewal fee will be half as much as biennial renewal. Due to the automation of sending renewal forms and the high percentage of online renewals, staff does not anticipate a significant increase in workload. If, as hoped by the board, annual renewal serves to decrease the individuals whose licenses terminate for failure to renew and therefore the number of nonroutine applications before the board, then the overall workload of board staff should decrease. Finally, the budget projection will be more accurate if based on annual renewal figures.

4. The board has amended ARM 24.101.413 and 24.114.401 exactly as proposed.

BOARD OF ARCHITECTS AND
LANDSCAPE ARCHITECTS
BAYLISS WARD, PRESIDENT

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

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

Certified to the Secretary of State April 19, 2010

8-4/29/10

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

In the matter of the amendment of) NOTICE OF AMENDMENT
ARM 24.141.301 definitions,)
24.141.405 fee schedule, and)
24.141.2102 continuing education)

TO: All Concerned Persons

1. On January 28, 2010, the State Electrical Board (board) published MAR notice no. 24-141-34 regarding the public hearing on the proposed amendment of the above-stated rules, at page 203 of the 2010 Montana Administrative Register, issue no. 2.

2. On February 18, 2010, a public hearing was held on the proposed amendment of the above-stated rules in Helena. Several comments were received by the February 26, 2010, deadline.

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

The following comments and responses pertain to ARM 24.141.405:

COMMENT 1: Several commenters opposed the increase in fees and questioned the department's reliance of budgetary constraints, the need to increase the fees at this time, and in the proposed amounts. The commenters also cited the current economic and unemployment situations in Montana and the nation, and the hardship the increased fees will create. While some of these commenters acknowledged the probability that fees might need to be increased by ten or 15 percent, they opposed the proposed increase as "excessive."

RESPONSE 1: After lengthy deliberation and consideration of all the comments in opposition to the proposed fee increases, the board decided to amend this rule by decreasing the electrician renewal fee for residential, journeyman, and master electricians from the proposed fee of \$140 per renewal cycle to \$100 per renewal cycle, and decreasing the proposed contractor renewal fee of \$300 per renewal cycle to \$200 per renewal cycle. The remaining fees are amended exactly as proposed. The board again notes that fees have not been raised in seven years.

COMMENT 2: In opposing the fee increases, one commenter stated that the fees are a tax and noted that only the Legislature can tax the people.

RESPONSE 2: All licensing boards are statutorily mandated by the Legislature at 37-1-134, MCA, to set and maintain board fees commensurate with the costs of

licensure and regulation. The board must be self-supporting and fees authorized for licensure and regulation purposes are not taxes.

COMMENT 3: One commenter suggested that a 50 or 75 percent increase might accomplish the board's intended economic result. The commenter noted that the proposed increases in individual license fees were greater than contractor license fees, and stated that the individuals were bearing an unfair brunt of fee increases. This commenter also asked that the board return to a three-year renewal cycle to coincide with the issuance of the National Electric Code (NEC) and preclude duplication of continuing education credits.

RESPONSE 3: After considering all the comments received in opposition to the fee increases, the board is amending this rule accordingly to reduce the individual and contractor licensing fees. The board maintains a two-year renewal cycle for appropriation and budgeting purposes and cannot coordinate legislative appropriation with the NEC issuance.

COMMENT 4: A few commenters opposed the fee increases and suggested the board instead cut costs by cutting back like everyone else, retaining the current computer system, make common sense rules to reduce attorney charges, not issuing plastic apprentice cards, and ensuring that state employees make no personal phone calls and put in a day's work for a day's pay.

RESPONSE 4: Apprentices must carry their cards for five years and have them on their persons at all times when working, as proof of apprentice registration. The cards were wearing out and causing problems with presenting proof of registration. The plastic cards solved this problem and are cost effective, costing less than one dollar per year per apprentice.

The board also notes that both the department and the board continually seek and implement ways to reduce costs associated with board functions. Examples of this are using electronic board books instead of paper ones and having some board meetings by telephone conference instead of in-person attendance.

COMMENT 5: One commenter protested the fee increases stating that going from a three-year to a two-year renewal cycle represented a 33 percent increase, but that the department now has a computer system that streamlines renewals and should require less employee time. The commenter opposed the "200 %" increase in fees.

RESPONSE 5: When the board previously changed to a two-year renewal cycle, fees were reduced accordingly. The current proposed fee increase is actually 100 percent, not 200 percent. Per 37-1-134, MCA, fees must be commensurate with board costs. The computer systems mentioned are expensive to purchase and maintain and may require fee increases because all boards administratively attached to the department are required to pay their share of the costs.

COMMENT 6: Several commenters requested that the fee increases be phased in and demanded that the department provide a thorough and complete accounting of staff hours and costs allocated to the board each quarter.

RESPONSE 6: The department is required biennially to provide detailed information to the Montana Legislature on current and projected licensee numbers and board revenues, expenses, activities, goals, objectives, and complaints. The board also reviews a current financial report, including the board's fiscal year income and expenditures to date, at each full board meeting. This fiscal information is publicly available from the board and is open to public inspection and scrutiny.

Fees can always be increased through administrative rulemaking, but projecting incremental increases does not account for changing costs and the need for fees to be commensurate with costs. Board staff does not have access to payroll information such as staff hours.

COMMENT 7: Several commenters opposed the fee increases and stated the increases punish local licensees by putting them at an unfair advantage in the marketplace. The commenters asked why the state bothers issuing licenses, alleging it does nothing to the unlicensed people caught working as electricians. The commenters suggested that the board increase revenue by surcharging out-of-state contractors and that the board should require a Montana jurisprudence exam and deny licensure to anyone refusing to take the exam.

RESPONSE 7: A license fee is not punishment; all licensees pay the same fee. The board has two inspectors in the field on a daily basis and the board does issue injunctions and impose fines for unlicensed practice. The board lacks the authority to impose a surcharge on out-of-state licensees. Currently, Montana laws and rules are addressed in the licensure examinations. A separate jurisprudence examination would be costly to develop and administer and would necessitate a further increase in fees to cover the required staff time and costs.

Remaining comments and responses pertain to ARM 24.141.2102:

COMMENT 8: Two commenters expressed concern that requiring "documented proof" of instructor credentials will be overly demanding and require copies of diplomas, etc. that would then require more board staff time to review. One commenter stated that the National Electrical Contractors' Association, which puts on courses, provides a catalogue with description of credentials of instructors, and that the national organization is responsible for checking credentials.

RESPONSE 8: By rule, the board requires certain credentials that course sponsors must request from course instructors. The board does not believe that it is onerous for course sponsors to provide the credentialing information, that has already been collected, to the board, or to comply by simply informing the board in writing of a course presenter's credentials.

COMMENT 9: One commenter stated that the proposed requirement for a course syllabus is cumbersome and too detailed, and asked that the board accept class descriptions, which had always sufficed in the past.

RESPONSE 9: The board agrees with the comment and is amending the rule to require a "course description and credit hours" instead of a syllabus. The board notes that this change will correlate the numbers of hours of credit offered with the description of the course provided.

4. The board has amended ARM 24.141.301 exactly as proposed.

5. The board has amended ARM 24.141.405 and 24.141.2102 with the following changes, stricken matter interlined, new matter underlined:

24.141.405 FEE SCHEDULE (1) through (4) remain as proposed.

(a) Contractor	300 <u>200</u>
(b) Master	140 <u>100</u>
(c) Journeyman	140 <u>100</u>
(d) Residential	140 <u>100</u>
(5) through (8) remain as proposed.	

24.141.2102 CONTINUING EDUCATION (1) through (3)(d) remain as proposed.

(e) a ~~syllabus~~ course description and credit hours of each course.
(4) through (7) remain as proposed.

STATE ELECTRICAL BOARD
JACK FISHER, PRESIDENT

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

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

Certified to the Secretary of State April 19, 2010

BEFORE THE BOARD OF HEARING AID DISPENSERS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF AMENDMENT,
ARM 24.150.301 definitions,	)	AMENDMENT AND TRANSFER,
24.150.401 fees, 24.150.402 record	)	AND REPEAL
retention, 24.150.501, 24.150.503,)	
and 24.150.505 regarding licensure,)	
24.150.2101 renewals, 24.150.2201,)	
24.150.2203, and 24.150.2204)	
regarding continuing education,)	
24.150.2301 unprofessional conduct,)	
the amendment and transfer of ARM)	
24.150.502 minimum testing, and)	
24.150.510 transactional document)	
requirements, and the repeal of ARM)	
24.150.403 notification, 24.150.504)	
licensees from other states, and)	
24.150.2202 exceptions)	

TO: All Concerned Persons

1. On February 11, 2010, the Board of Hearing Aid Dispensers (board) published MAR Notice No. 24-150-36 regarding the public hearing on the proposed amendment, amendment and transfer, and repeal of the above-stated rules, at page 284 of the 2010 Montana Administrative Register, issue no. 3.

2. On March 8, 2010, a public hearing was held on the proposed amendment, amendment and transfer, and repeal of the above-stated rules in Helena. Several comments were received by the March 16, 2010, deadline.

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

COMMENT 1: One commenter suggested changes to several of the rules proposed in the notice, as well as additional provisions to be inserted within those rules.

RESPONSE 1: While the input provided by this comment is welcomed and may be considered with regard to future rules projects, the commenter failed to explain why the suggested amendments are necessary or appropriate, or how the suggested amendments relate to the notice. In addition, this comment exceeds the scope of the notice to the extent that additional provisions were suggested that were not contained in the proposal notice. However, the commenter did suggest correcting out-of-date references to what is now known as the International Hearing Society. The board agrees with the suggestion and is amending ARM 24.150.301 and 24.150.2201 accordingly.

COMMENT 2: A few commenters expressed dissatisfaction with and opposition to the increased fees in ARM 24.150.401, stating that the increase is exorbitant and would be a burden on employees and employers. The commenters suggested that the board reduce expenses instead of raising fees, and recommended either combining the board with audiologists or attaching the board to another department for the purposes of consumer protection to reduce licensee cost, since many of the board's licensees are dually licensed as audiologists.

RESPONSE 2: The board is faced with a deficit that can only be addressed through a fee increase if the board is to continue functioning. The board has been reduced from seven members to five, meetings have been reduced from four meetings per year to three, with some meetings held telephonically, all in an effort to reduce costs. The board is a necessary entity for the protection of the public, while preserving the occupation from the oversight of other professions that might not give due consideration to those already practicing in the profession. The board also points out that because of the relatively small number of licensees that share the burden of fixed costs, the cost per licensee is unavoidably greater. The board is amending ARM 24.150.401 exactly as proposed.

COMMENT 3: One commenter objected to the amendments to ARM 24.150.501, stating that the amendments incorrectly refer to the passing score for each of the sections of the written examination, although the exam is not broken into parts that can be individually passed or failed. In addition, the commenter stated that the proposed amendments refer to the practical exam and eliminate the need for license applicants to pass each part of the practical exam. The commenter suggested that the written exam score be the greater of 75 percent or the overall passing score as recommended by the International Hearing Society.

RESPONSE 3: The board agrees that the proposed amendments to ARM 24.150.501 may allow an applicant to average the scores from several parts of the practical examination, which could adversely affect the health, safety, and welfare of the public. Therefore, the board is not amending ARM 24.150.501 at this time, but may consider amending this rule in future rulemaking projects.

COMMENT 4: One commenter suggested that the board amend ARM 24.150.503 to better clarify what trainee hours count toward the 1,000 hours of supervised training. The commenter stated that the trainee logs currently used by the department are confusing and inadequate and argued that the 1,000 hours should not be limited to supervised work for clients, since many trainees would be unable to get the required experience in only one year.

RESPONSE 4: The board agrees that the trainee logs should be amended. The board further notes that defining "supervision" or otherwise clarifying what experience counts toward the 1,000 hours of supervised training may be addressed in a future rule project. However, because these suggestions exceed the scope of the proposed notice, the board is amending ARM 24.150.503 exactly as proposed.

4. The board has amended ARM 24.150.401, 24.150.402, 24.150.503, 24.150.505, 24.150.2101, 24.150.2203, 24.150.2204, and 24.150.2301 exactly as proposed.

5. The board has amended ARM 24.150.301 and 24.150.2201 with the following changes, stricken matter interlined, new matter underlined:

24.150.301 DEFINITIONS (1) through (5) remain as proposed.

(a) the written International Hearing Society examination and a practical examination through the ~~International Institute for Hearing Instrument Studies~~ International Hearing Society, verifying the minimum competencies to fit and dispense hearing aids and related devices, with a passing score of 75 percent or greater on each examination; and

(b) remains as proposed.

24.150.2201 CONTINUING EDUCATION REQUIREMENTS (1) through (3) remain as proposed.

(4) Continuing education courses on fitting and dispensing hearing aids sponsored by the Montana Hearing Aid Society, the ~~National Institute for Hearing Instruments Studies~~ International Hearing Society, the American Speech Language Hearing Association, the American Conference of Audioprosthology, the Montana Speech and Hearing Association, the Academy of Dispensing Audiologists, and the American Academy of Audiology are preapproved. College courses and continuing education courses offered in related disciplines will be reviewed and approved by the board on a case-by-case basis.

(5) through (8) remain as proposed.

6. The board did not amend ARM 24.150.501 as proposed.

7. The board has amended and transferred ARM 24.150.502 (24.150.601) and 24.150.510 (24.150.602) exactly as proposed.

8. The board has repealed ARM 24.150.403, 24.150.504, and 24.150.2202 exactly as proposed.

BOARD OF HEARING AID DISPENSERS
LEE OINES, CHAIRMAN

/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 April 19, 2010

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF ADOPTION AND
Rule I (42.15.329), amendment of	)	AMENDMENT
ARM 42.15.107, 42.15.108,)	
42.15.109, 42.15.110, 42.15.112,)	
42.15.119, 42.15.120, 42.15.204,)	
42.15.205, 42.15.206, 42.15.213,)	
42.15.214, 42.15.215, 42.15.216,)	
42.15.217, 42.15.218, 42.15.219,)	
42.15.220, 42.15.221, 42.15.222,)	
42.15.301, 42.15.303, 42.15.310,)	
42.15.312, 42.15.315, 42.15.316,)	
42.15.317, 42.15.318, 42.15.319,)	
42.15.320, 42.15.321, 42.15.322,)	
42.15.325, 42.15.326, 42.15.327,)	
42.15.328, 42.15.401, 42.15.402,)	
42.15.403, 42.15.407, 42.15.414,)	
42.15.427, 42.15.510, 42.15.523,)	
42.15.524, 42.15.525, 42.15.526,)	
42.15.601, 42.15.602, 42.15.603,)	
42.15.604, 42.15.605, 42.15.802,)	
42.15.803, 42.15.804, 42.15.805,)	
42.15.806, 42.15.807, 42.15.903,)	
42.15.906, relating to individual)	
income taxes)	

TO: All Concerned Persons

1. On March 11, 2010, the department published MAR Notice No. 42-2-820 regarding the proposed adoption and amendment of the above-stated rules at page 614 of the 2010 Montana Administrative Register, issue no. 5.

2. A public hearing was held on March 31, 2010, to consider the proposed adoption and amendment. No one appeared at the hearing to testify and no public comments were received either at the hearing or by the close of comment date.

3. The department proposes additional amendments as shown below to ARM 42.15.112 to reflect the recently enacted Military Spouses Residency Relief Act and to correct an inconsistency within the example in ARM 42.15.119 (3)(c).

42.15.112 NONRESIDENT MILITARY PERSONNEL (1) A nonresident member of the United States armed forces who is living in this state solely by reason of compliance with military orders does not become a Montana resident solely by reason of being present in this state in compliance with military orders and their compensation for military service is not Montana source income. Starting in 2009, some nonresident

spouses who move to Montana solely to be with that nonresident serviceperson are also allowed to retain their home residence or "domicile" and, subject to certain rules and limitations described in (6), their wage and other personal services income is not Montana source income.

(2) through (5)(e) remain the same.

(6) Retroactive to the beginning of calendar year 2009, the Military Spouses Residency Relief Act, Public Law No. 11197 (MSRRA), enacted special rules that affect how Montana and other states tax the wage and other personal service income earned by nonmilitary spouses (for simplicity, the term "wages" will be used to describe all personal services income).

(a) If a military serviceperson and nonmilitary spouse are residents of the same state (the "home state"), when the nonmilitary spouse moves to Montana solely to be with the military spouse who is serving in Montana in compliance with military orders MSRRA allows the nonmilitary spouse to remain a resident of the home state. If that nonmilitary spouse does remain a resident of the home state, only the home state may tax the nonmilitary spouse's wages. Wages earned in Montana that are sourced to the home state are not Montana source income.

(b) Qualified nonmilitary spouses must claim an annual exemption from wage withholding by completing Form MSR – Employee Certificate of Status under the Military Spouses Residency Relief Act.

(c) If and when a nonmilitary spouse no longer meets the requirements of MSRRA, their wages are sourced to Montana as provided in 15-30-2101, MCA. The following events disqualify the nonmilitary spouse's wages for special treatment under MSRRA:

(i) the military spouse leaves the military;
(ii) the nonmilitary spouse becomes a resident of Montana;
(iii) the marriage to the military spouse terminates; and
(iv) physical separation due to a duty change when the military spouse's orders move them outside Montana and their spouse is allowed to join them but chooses not to.

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, MCA

42.15.219 PENSION AND ANNUITY INCOME EXCLUSION (1) and (2) remain the same.

(3) When married taxpayers file separately, each spouse's exclusion and phase-out are computed independently and a spouse's exclusion begins to be phased out only when his or her federal adjusted gross income exceeds the amount allowed in (1)(a). Examples for tax years beginning before January 1, 2010, are:

(a) Jane, a single taxpayer has federal adjusted gross income of \$20,000 which is made up of \$5,000 of pension income and \$15,000 of other income. Her pension and annuity exclusion for Montana purposes is \$3,600.

(b) Frank and Edith, a married couple, file a joint income tax return and both receive pension and annuity income. Frank's taxable pension included in federal adjusted gross income is \$5,600. Edith's taxable pension included in federal adjusted gross income is \$2,000. Their combined federal adjusted gross income is \$25,000.

Their Montana pension and annuity exclusion is \$5,600 (the maximum \$3,600 for Frank and the full taxable amount of \$2,000 for Edith). Even though their combined federal adjusted gross income is below \$30,000, Edith is not entitled to a \$3,600 pension exclusion as the exclusion is limited to her taxable pension of \$2,000.

(c) John, a single taxpayer, has federal adjusted gross income of \$31,000. This consists of ~~\$8,000~~ 7,000 of taxable pension income and \$24,000 of other income. John's Montana pension exclusion is \$1,600. ($\$3,600 - ((\$31,000 - \$30,000) \times 2)$).

(d) John and Barbara, a married couple, file a joint income tax return and both report federal taxable pension income. John's federal taxable pension is \$5,600 and Barbara's federal taxable pension income is \$3,000. Their combined federal adjusted gross income is \$33,000. Their combined Montana pension and annuity exclusion is \$600. ($\$6,600 - ((\$33,000 - \$30,000) \times 2)$).

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, MCA

4. Therefore the department amends ARM 42.15.112 and 42.15.219 with the amendments listed above, adopts New Rule I (42.15.329), and amends ARM 42.15.107, 42.15.108, 42.15.109, 42.15.110, 42.15.112, 42.15.119, 42.15.120, 42.15.204, 42.15.205, 42.15.206, 42.15.213, 42.15.214, 42.15.215, 42.15.216, 42.15.217, 42.15.218, 42.15.219, 42.15.220, 42.15.221, 42.15.222, 42.15.301, 42.15.303, 42.15.310, 42.15.312, 42.15.315, 42.15.316, 42.15.317, 42.15.318, 42.15.319, 42.15.320, 42.15.321, 42.15.322, 42.15.325, 42.15.326, 42.15.327, 42.15.328, 42.15.401, 42.15.402, 42.15.403, 42.15.407, 42.15.414, 42.15.427, 42.15.510, 42.15.523, 42.15.524, 42.15.525, 42.15.526, 42.15.601, 42.15.602, 42.15.603, 42.15.604, 42.15.605, 42.15.802, 42.15.803, 42.15.804, 42.15.805, 42.15.806, 42.15.807, 42.15.903, 42.15.906 as proposed.

5. An electronic copy of this adoption notice is available through the department's site on the World Wide Web at www.mt.gov/revenue, under "for your reference"; "DOR administrative rules"; and "upcoming events and proposed rule changes." The department strives to make the electronic copy of this adoption notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

/s/ Cleo Anderson
CLEO ANDERSON
Rule Reviewer

/s/ Dan R. Bucks
DAN R. BUCKS
Director of Revenue

Certified to Secretary of State April 19, 2010

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

IN THE MATTER OF the Petition of	)	UTILITY DIVISION
The Boeing Company and Montana Aviation	)	DOCKET NO. D2009.6.79
Research Company for Declaratory Order)	
on Scope of Commission Jurisdiction	)	DECLARATORY RULING

INTRODUCTION

1. On June 3, 2009, The Boeing Company (Boeing) and Montana Aviation Research Company (MARCO), a wholly owned subsidiary of Boeing (collectively referred to hereafter as MARCO), filed with the Montana Public Service Commission (commission) a Petition for Declaratory Ruling addressing the commission's jurisdiction, or lack of jurisdiction over certain obligations, terms, and conditions under agreements for the provision of water in and near the old Glasgow Air Force Base in Valley County, Montana.

BACKGROUND

2. MARCO is the holder of certain water rights and the owner of a water treatment plant and water distribution system at what was formerly known as the Glasgow Air Force Base (GAFB), now known as the Glasgow Industrial Airport.

3. Dry Prairie Rural Water Authority of Culbertson, Montana (Dry Prairie) is organized and established as a water authority under Montana law for the purpose of constructing and operating a water supply distribution system. Dry Prairie wishes to purchase water from MARCO, on a temporary basis, for distribution by Dry Prairie to its customers. MARCO is agreeable to selling water in bulk to Dry Prairie on the condition that such an arrangement does not subject MARCO to the jurisdiction of the commission. Dry Prairie is a municipal, industrial, and rural water system for Valley, Daniels, Sheridan, and Roosevelt counties outside the boundaries of the Fort Peck Indian Reservation. Dry Prairie is organized pursuant to Title 75, chapter 6, part 3, MCA, and is owned and operated by the off-reservation users. The Assiniboine and Sioux Rural Water System is the on-reservation rural water system. Together these two systems comprise one regional project called the Fort Peck Reservation Rural Water System (the project).

4. Glasgow Air Force Base (GAFB), now known as Glasgow Industrial Airport, is located in the northeast corner of Montana, approximately 15 miles north of the City of Glasgow, Montana (the city). The GAFB was inactivated as a U.S. Air Force facility and on or about March 29, 1979, the United States transferred a portion of the GAFB to Valley County, a political subdivision of the state of Montana (county). On or about March 12, 1992, county transferred a substantial portion of the GAFB, including runways, taxiways, the control tower, hangars, numerous support facilities, water supply facilities, and Water Right No. 40S 171767-00 to MARCO, which operates the GAFB as an aircraft testing facility.

5. The water supply facilities acquired by MARCO include a 24-mile water pipeline and processing system (transmission system) consisting of an intake on the Missouri River, the pipeline itself, several pumping stations, a treatment plant, and various easements and incidental properties. The transmission system is located outside the boundaries of a housing and commercial development area adjacent to the GAFB, referred to St. Marie.

6. The residents of St. Marie elected to form the North Valley County Water and Sewer District, Inc. (district) pursuant to Title 7, chapter 13, parts 22 and 23, Mont. Code Ann. The district is responsible for providing water and sewer services to St. Marie. The district owns the water distribution system located within St. Marie. MARCO transports water through the transmission system (including the treatment facility) and sells treated water to the district at a single metered gate at the district's boundary. The district resells the water to its government, commercial, and residential customers located within St. Marie and on the adjacent property.

7. Valley Park, Inc. (Valley Park) owned and was developing the undeveloped portions of St. Marie at the time that MARCO initiated its aircraft testing facility operations.

8. MARCO, Boeing, city, district, Valley County, and Valley Park entered into a water system agreement dated December 20, 1991 (water system agreement), which generally describes the obligations of the parties. Prior to execution of the water system agreement, Valley County owned the transmission and distribution systems and proposed to transfer the obligations and responsibilities it assumed upon acquiring the GAFB properties from the federal government in 1979. These obligations included water and sewer service to the GAFB and the adjacent housing areas and maintaining and, when necessary, repairing and refurbishing the systems.

9. The city has an arrangement with MARCO and Boeing to alternate usage of the intake facility and the first stage pumping. The city takes the water pumped from the Missouri River to a "T" on the transmission system located about eight miles north of the intake facility. From the "T" the city transports the water to the city through a city owned pipeline. The city holds its own water right and fully controls its operations, taking the entire flow of water when necessary to satisfy its water needs. Neither MARCO nor Boeing share control of expenses of such operations by the city.

10. On January 10, 1991, prior to acquiring the GAFB and entering into the water system agreement, MARCO and Boeing sought a declaratory ruling from the commission. MARCO sought a determination that its acquisition of the GAFB and its obligations under the water system agreement did not subject it to the jurisdiction of the commission. The specific question presented to the commission was as follows:

"The question of law presented to the Commission is whether MARCO, as described in the facts presented by MARCO, is a public utility or common carrier subject to the jurisdiction of the Montana Public Service Commission."

The commission, through its order of March 6, 1992, determined that MARCO was not subject to commission jurisdiction.

11. The project (the aforementioned Fort Peck Reservation Rural Water System) is designed to bring Missouri River water, treated to meet safe drinking water standards, to existing municipal water systems, rural households, and livestock pasture taps in northeastern Montana. It is anticipated that the two systems (on reservation and off reservation) will share common facilities, including the intake facility and the water treatment plant. The tribal system is operated by the Fort Peck Tribes and held in trust by the Department of Interior for the tribes.

12. The major components of the project are an intake facility on the Missouri River, southeast of Wolf Point, Montana, and a 13-million gallon-per-day treatment facility (facility). Once treated, the water will be pumped through 3,200 miles of pipeline by 20 mainline pump stations, and will be delivered to a population of about 31,000 persons for municipal, rural, industrial, and livestock purposes in 7,000 square mile areas of northeast Montana. A temporary water supply is needed until the facility and pipeline system are completed. Dry Prairie and MARCO have entered into an agreement for MARCO to provide potable water to Dry Prairie on a temporary basis, subject to, among other things, a determination by the commission that the MARCO-Dry Prairie agreement (discussed below) does not subject MARCO to the jurisdiction of the commission.

13. MARCO and Dry Prairie entered into a Water Buy and Sell Agreement dated January 23, 2009 (water provider agreement), wherein the parties agreed to, among other things, the following:

a. MARCO agrees to provide potable water in the approximate amount of 416 equivalent dwelling units (EDUs) to Dry Prairie during the term of the agreement.

b. Dry Prairie, at its own expense, will install a pipeline at a point of delivery with a meter and required measuring devices. Parties may ask for testing of the accuracy of the meter.

c. Dry Prairie will, at its own expense, obtain all necessary permits for construction of a water distribution system that will take water from the point of delivery to customers in Dry Prairie's South Valley County service area, including the Town of Nashua.

d. Dry Prairie obtains no ownership or right to possession of the water system pursuant the agreement.

e. Dry Prairie agrees to pay MARCO \$1.26 per 1,000 gallons for the first 200,000 gallons per calendar day, a rate of \$2.52 per day per 1,000 gallons for the next 20,000 gallons per day and a rate of \$4.04 per 1,000 gallons for any water delivered under the agreement over 220,000 gallons per day.

QUESTION PRESENTED

14. The question presented to the commission is whether MARCO, as described in the facts presented above, including a consideration of the water system agreement and the water provider agreement, is a public utility or common carrier subject to the jurisdiction of the Montana Public Service Commission.

ANALYSIS

A. Status as a Public Utility

15. Montana's definition of "public utility" is set forth in § 69-3-101(1), MCA, which states as follows:

"(1) The term 'public utility', within the meaning of this chapter, shall embrace every corporation, both public and private, company individual, association of individuals, their lessees, trustees, or receivers appointed by any court whatsoever, that now or hereafter may own, operate, or control any plant or equipment, or any part or a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

- (a) heat;
- (b) street - railway service;
- (c) light;
- (d) power in any form or by any agency;
- (e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;
- (f) regulated telecommunications service.

The definition of public utility does not include:

- (a) privately owned and operated water, sewer, or combination systems that do not serve the public;
- (b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 132, parts 22 and 23; or
- (c) a person exempted from regulation as a public utility as provided in 69-3-111."

16. Dry Prairie is the new entity proposed to be added to those entities securing water through the transmission system since the commission issued its 1992 declaratory ruling. Dry Prairie is a regional water authority formed pursuant to the Regional Water and Wastewater Authority Act, Section 75-6-301 *et seq.*, MCA. A water authority has the powers granted under Section 75-6-313, MCA, which includes the power to:

"[a]cquire by purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distribution, and use of water and transportation facilities, pump stations, lift stations, treatment facilities, and other facilities necessary for the transportation and treatment of wastewater and may own and hold real and personal property that may be necessary to carry out the purposes of its organization."

17. A "common carrier" is defined as "[e]veryone who offers to the public to carry persons, property, or messages, excepting only telegraphic or telephonic messages. § 69-11-101(1), MCA.

18. As is the case with the district, Dry Prairie has the obligation to provide water to the consumers within its boundaries. The ultimate consumer interests are

the responsibility of Dry Prairie and not the commission, which is proscribed from regulating regional water authorities that have been formed under the provisions of the Regional Water and Wastewater Authority Act, Section 75-6-301 *et seq.*, MCA.

19. The MARCO-city-district-Dry Prairie relationships do not make MARCO a public utility. MARCO owns and operates the GAFB as an aircraft testing facility, which is MARCO's primary concern. Incidental to supplying water to itself, MARCO has agreed to supply water in bulk pursuant to the water system agreement and the water provider agreement (on a temporary basis). MARCO's participation in these two agreements, and its sale of water in bulk to entities exempt from commission regulation does not make MARCO a public utility.

20. Moreover, the commission further finds that MARCO is not a common carrier. As was held in the March 6, 1992 Declaratory Ruling and as still holds true at this date, the commission has not interpreted § 69-11-101, MCA, as applying to the transportation of water by pipelines, nor has the commission determined there to be a basis in law to do so.

21. This ruling is binding upon MARCO and determines its rights only upon the factual situation presented.

DECLARATORY RULING

Fully apprised of all premises, the Montana Public Service Commission hereby DECLARES that, in furnishing and delivering water to the City of Glasgow, the Valley County Water District and, on a temporary basis, the Dry Prairie Rural Water Authority, as described above, The Boeing Company and Montana Aviation Research Company, individually or jointly, do not hold public utility or common carrier status under the jurisdiction of the commission under the laws of the state of Montana.

Done and dated this 14th day of April 2010.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/Greg Jergeson
GREG JERGESON
Chairman

/s/ Ken Toole
KEN TOOLE
Vice Chairman

/s/ Gail Gutsche
GAIL GUTSCHE
Commissioner

/s/ Brad Molnar
BRAD MOLNAR
Commissioner

/s/ John Vincent
JOHN VINCENT
Commissioner

NOTICE: Petitioner has the right to appeal the decision of this agency by filing a petition for judicial review in district court within 30 days after service of this decision. Judicial review is conducted pursuant to § 16-4-411, MCA.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 14th day of April 2010, a true and correct copy of the foregoing has been serviced by placing same in the United States Mail, postage prepaid, addressed as follows:

Alan C. Bryan
Crowley Fleck PLLP
500 Transwestern Plaza II
490 North 31st Street
P O Box 2529
Billings MT 59103-3441

/s/ Verna Stewart
PSC Commission Secretary

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 December 31, 2009. This table includes those rules adopted during the period January 1, 2010, through March 31, 2010, and any proposed rule action that was pending during the past six-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2010, this table, and the table of contents of this issue of the MAR.

This table indicates the department name, title number, rule numbers in ascending order, catchphrase or the subject matter of the rule, and the page number at which the action is published in the 2009 and 2010 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 March 2010 appear. Vacancies scheduled to appear from May 1, 2010, through July 31, 2010, 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 April 1, 2010.

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 MARCH 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Board of Pardons and Parole (Corrections)			
Mr. Darryl Dupuis Polson	Governor	reappointed	3/17/2010 1/1/2014
Qualifications (if required): having education or experience in criminology			
Ms. Margaret Hall-Bowman Pablo	Governor	reappointed	3/17/2010 1/1/2014
Qualifications (if required): having education or experience in criminology			
Community Health Center Advisory Group (Governor)			
Ms. Jill Baker Great Falls	Governor	Putnam	3/18/2010 7/1/2011
Qualifications (if required): public representative			
Ms. Laurie Francis Livingston	Governor	Clemons	3/18/2010 7/1/2011
Qualifications (if required): executive employee of a community health center			
Mr. David Herrera Missoula	Governor	Kenyon	3/18/2010 7/1/2011
Qualifications (if required): public representative			
Ms. Marge Levine Helena	Governor	reappointed	3/18/2010 7/1/2011
Qualifications (if required): representative of the Montana Primary Care Association			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Community Health Center Advisory Group (Governor) cont.			
Ms. Devri Rockwood Libby	Governor	Howell	3/18/2010 7/1/2011
Qualifications (if required): chief financial officer of a community health center			
Information Technology Board (Administration)			
Mr. Tim Burton Helena	Governor	Fasbender	3/17/2010 0/0/0
Qualifications (if required): representative a state agency			
Mental Disabilities Board of Visitors (Governor)			
Ms. Betty Cooper Heart Butte	Governor	Lewis	3/17/2010 7/1/2011
Qualifications (if required): public representative			
Ms. Lin Olson Helena	Governor	Raser	3/17/2010 7/1/2011
Qualifications (if required): consumer of developmental disability services			
Mr. Patrick Wayne Missoula	Governor	Hopkins	3/17/2010 7/1/2011
Qualifications (if required): consumer of mental health services			
Montana Arts Council (Montana Arts Council)			
Mr. Mark Kuipers Missoula	Governor	reappointed	3/11/2010 2/1/2015
Qualifications (if required): public representative			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Montana Arts Council (Montana Arts Council) cont.			
Mr. Rob Quist Kalispell	Governor	reappointed	3/11/2010 2/1/2015
Qualifications (if required): public representative			
Ms. Jean Steele Hamilton	Governor	Red Star	3/11/2010 2/1/2015
Qualifications (if required): public representative			
Ms. Youpa Stein Arlee	Governor	reappointed	3/11/2010 2/1/2015
Qualifications (if required): public representative			
Mr. Wilbur Wood Roundup	Governor	reappointed	3/11/2010 2/1/2015
Qualifications (if required): public representative			
Reserved Water Rights Compact Commission (Natural Resources and Conservation)			
Mr. Richard Kirn Poplar	Governor	Belcourt	3/17/2010 6/1/2011
Qualifications (if required): public representative			
Small Business Health Insurance Pool Board (State Auditor)			
Ms. Betty Beverly Helena	Governor	reappointed	3/11/2010 1/1/2013
Qualifications (if required): consumer			

BOARD AND COUNCIL APPOINTEES FROM MARCH 2010

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
Small Business Health Insurance Pool Board (State Auditor) cont.			
Ms. Katherine Buckley-Patton	Governor	Briese-Zimmer	3/11/2010
Helena			1/1/2013
Qualifications (if required): management level individual with knowledge of Medicaid services			
Mr. Brian Sheridan	Governor	Miles	3/11/2010
Missoula			7/1/2011
Qualifications (if required): private sector representative			
Youth Justice Council (Justice)			
Mr. Dale Four Bear	Governor	reappointed	3/12/2010
Poplar			2/9/2012
Qualifications (if required): competency in addressing problems facing youth			

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Aging Advisory Council (Public Health and Human Services) Ms. Betty Aye, Broadus Qualifications (if required): public representative	Governor	7/18/2010
Ms. Pat Ludwig, Chester Qualifications (if required): public representative	Governor	7/18/2010
Ms. Connie Bremner, Browning Qualifications (if required): public representative	Governor	7/18/2010
Mr. Robert Maxson, Billings Qualifications (if required): public representative	Governor	7/18/2010
Ms. Grace Bowman, Billings Qualifications (if required): public representative	Governor	7/18/2010
Agriculture Development Council (Agriculture) Mr. Ervin Schlemmer, Joliet Qualifications (if required): agriculture producer	Governor	7/1/2010
Mr. Verges Ageson, Guildford Qualifications (if required): agriculture producer	Governor	7/1/2010
Board of Banking (Administration) Ms. Evelyn Casterline, Vida Qualifications (if required): public representative	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Banking (Administration) cont. Mr. Mark Huber, Helena Qualifications (if required): national bank officer of a medium size bank	Governor	7/1/2010
Board of Funeral Service (Labor and Industry) Mr. Thomas Meeks, Great Falls Qualifications (if required): crematory operator	Governor	7/1/2010
Board of Hearing Aid Dispensers (Labor and Industry) Mr. Gene Bukowski, Billings Qualifications (if required): hearing aid dispenser with a master's degree and national certification	Governor	7/1/2010
Dr. Stephen Kramer, Billings Qualifications (if required): otolaryngologist	Governor	7/1/2010
Board of Nursing (Labor and Industry) Ms. Deborah Hanson, Miles City Qualifications (if required): public representative	Governor	7/1/2010
Ms. Brenda Schye, Fort Peck Qualifications (if required): public representative	Governor	7/1/2010
Ms. Karen Pollington, Havre Qualifications (if required): registered nurse	Governor	7/1/2010
Ms. Kathleen Sprattler, Billings Qualifications (if required): licensed practical nurse	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Nursing Home Administrators (Labor and Industry) Ms. Linda Sandman, Helena Qualifications (if required): Nursing Home Administrator	Governor	5/28/2010
Board of Pharmacy (Labor and Industry) Mr. Jim MacKenzie, Whitefish Qualifications (if required): licensed pharmacist	Governor	7/1/2010
Ms. Lee Ann Bradley, Missoula Qualifications (if required): licensed pharmacist	Governor	7/1/2010
Board of Physical Therapy Examiners (Labor and Industry) Ms. Robin Peterson Smith, Billings Qualifications (if required): physical therapist	Governor	7/1/2010
Board of Plumbers (Labor and Industry) Mr. Timothy E. Regan, Miles City Qualifications (if required): master plumber	Governor	5/4/2010
Mr. Olaf Stimac, Great Falls Qualifications (if required): journeyman plumber	Governor	5/4/2010
Board of Professional Engineers and Land Surveyors (Labor and Industry) Mr. Steve Wright, Columbia Falls Qualifications (if required): licensed chemical engineer	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Professional Engineers and Land Surveyors (Labor and Industry) cont. Mr. David Elias, Anaconda Qualifications (if required): licensed land surveyor	Governor	7/1/2010
Board of Public Accountants (Labor and Industry) Ms. Irma Paul, Helena Qualifications (if required): public representative	Governor	7/1/2010
Mr. Michael Johns, Deer Lodge Qualifications (if required): certified public accountant	Governor	7/1/2010
Ms. Pamela K. Lynch, Plains Qualifications (if required): certified public accountant	Governor	7/1/2010
Board of Radiologic Technologists (Labor and Industry) Mr. Mike Nielsen, Billings Qualifications (if required): radiologic technician/radiology practitioner assistant	Governor	7/1/2010
Board of Real Estate Appraisers (Labor and Industry) Mr. Dennis Hoeger, Bozeman Qualifications (if required): real estate appraiser	Governor	5/1/2010
Ms. Jennifer McGinnis, Polson Qualifications (if required): real estate appraiser	Governor	5/1/2010
Ms. Marilyn K. Rose, Great Falls Qualifications (if required): public representative	Governor	5/1/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Board of Realty Regulation (Labor and Industry) Ms. Judith Peasley, Seeley Lake Qualifications (if required): public representative	Governor	5/9/2010
Board of Regents (Higher Education) Mr. Robert Barnosky, Billings Qualifications (if required): student	Governor	6/30/2010
Board of Sanitarians (Labor and Industry) Mr. James Zabrocki, Miles City Qualifications (if required): sanitarian	Governor	7/1/2010
Board of Veterinary Medicine (Labor and Industry) Ms. Joan Carey Marshall, Ekalaka Qualifications (if required): veterinarian	Governor	7/31/2010
Ms. Kim Baker, Hot Springs Qualifications (if required): consumer	Governor	7/31/2010
Board of Water Well Contractors (Natural Resources and Conservation) Mr. Pat Byrne, Great Falls Qualifications (if required): water well contractor	Governor	7/1/2010
Community Service Commission (Labor and Industry) Director Keith Kelly, Helena Qualifications (if required): representative of the Montana Department of Labor	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Community Service Commission (Labor and Industry) cont. Rep. Sheila Rice, Great Falls Qualifications (if required): representative of volunteer agencies	Governor	7/1/2010
Dr. Johnel Barcus, Browning Qualifications (if required): representative of the private sector	Governor	7/1/2010
Mr. Cedric Jacobson, Missoula Qualifications (if required): youth representative	Governor	7/1/2010
Ms. Jackie Girard, Helena Qualifications (if required): representative of the National Service Corporation	Governor	7/1/2010
Mr. Doug Braun, Billings Qualifications (if required): representative of organized labor	Governor	7/1/2010
Ms. Kimberly Miske, Wibaux Qualifications (if required): representative of local government	Governor	7/1/2010
Ms. Laura Pflum, Missoula Qualifications (if required): youth representative	Governor	7/1/2010
Consumer Settlement Advisory Council (Attorney General) Rep. Bill Thomas, Hobson Qualifications (if required): none specified	Attorney General	7/10/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Consumer Settlement Advisory Council (Attorney General) cont. Rep. Eve Franklin, Helena Qualifications (if required): none specified	Attorney General	7/10/2010
Mr. Matthew Dale, Helena Qualifications (if required): none specified	Attorney General	7/10/2010
Ms. Tara Veazey, Helena Qualifications (if required): none specified	Attorney General	7/10/2010
Ms. Ali Bovingdon, Helena Qualifications (if required): none specified	Attorney General	7/10/2010
District Court Council (Justice) Mr. Glen Welch, Qualifications (if required): none specified	nominated	6/30/2010
Economic Development Advisory Council (Commerce) Mr. Joseph B. Reber, Helena Qualifications (if required): public representative	Governor	7/23/2010
Mr. Jim Smitham, Butte Qualifications (if required): public representative	Governor	7/23/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Economic Development Advisory Council (Commerce) cont.		
Mr. Paul Tuss, Havre Qualifications (if required): public representative	Governor	7/23/2010
Ms. Corlene Martin, Choteau Qualifications (if required): public representative	Governor	7/23/2010
Information Technology Managers' Advisory Council (Administration)		
Mr. Mike Jacobson, Helena Qualifications (if required): Department of Justice representative	Director	7/1/2010
Mr. Dick Clark, Helena Qualifications (if required): Department of Administration representative	Director	7/1/2010
Mr. Rick Bush, Helena Qualifications (if required): Department of Natural Resources and Conservation representative	Director	7/1/2010
Mr. Mike Bousliman, Helena Qualifications (if required): Department of Transportation representative	Director	7/1/2010
Mr. Joe Frohlich, Hamilton Qualifications (if required): Ravalli County representative	Director	7/1/2010
Ms. Tammy LaVigne, Helena Qualifications (if required): Department of Labor and Industry representative	Director	7/1/2010
Mr. Mark Van Alstyne, Helena Qualifications (if required): Secretary of State representative	Director	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Interagency Coordinating Council for State Prevention Programs (Public Health and Human Services) Ms. Diane Cashell, Bozeman Qualifications (if required): prevention programs/services experience	Governor	6/16/2010
Ms. Patty Stevens, Ronan Qualifications (if required): prevention programs/services experience	Governor	6/16/2010
Library Commission (State Library) Ms. Marsha Hinch, Choteau Qualifications (if required): public representative	Governor	5/22/2010
Mental Disabilities Board of Visitors (Governor) Ms. Joan Nell Macfadden, Great Falls Qualifications (if required): experience with emotionally disturbed children	Governor	7/1/2010
Mr. Graydon Davies Moll, Polson Qualifications (if required): experience with developmentally disabled adults	Governor	7/1/2010
Ms. Sandra Mihelish, Helena Qualifications (if required): experience with welfare of mentally ill individuals	Governor	7/1/2010
Montana Cherry Commodity Advisory Committee (Agriculture) Mr. Oliver Dupuis, Polson Qualifications (if required): none specified	Director	5/3/2010
Mr. Barry Hansen, Polson Qualifications (if required): none specified	Director	5/3/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Heritage Preservation and Development Commission (Commerce) Mr. Randy Hafer, Billings Qualifications (if required): business person	Governor	5/23/2010
Ms. Marilyn Ross, Twin Bridges Qualifications (if required): historic preservation representative	Governor	5/23/2010
Mr. Colin Mathews, Virginia City Qualifications (if required): public representative	Governor	5/23/2010
Mr. Philip Maechling, Florence Qualifications (if required): community planner	Governor	5/23/2010
Montana Historical Society Board of Trustees (Historical Society) Mr. John G. Lepley, Fort Benton Qualifications (if required): public member	Governor	7/1/2010
Ms. Shirley Groff, Butte Qualifications (if required): public member	Governor	7/1/2010
Mr. James W. Murry, Clancy Qualifications (if required): public member	Governor	7/1/2010
Montana Potato Commodity Advisory Committee (Agriculture) Mr. John Venhuizen, Manhattan Qualifications (if required): not listed	Director	5/20/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Montana Potato Commodity Advisory Committee (Agriculture) cont. Mr. Don Steinbeisser Jr., Sidney Qualifications (if required): not listed	Director	5/20/2010
Petroleum Tank Release Compensation Board (Environmental Quality) Mr. Roger A. Noble, Kalispell Qualifications (if required): representative of the petroleum services industry	Governor	6/30/2010
Mr. Greg Cross, Billings Qualifications (if required): representative of the independent petroleum marketing industry	Governor	6/30/2010
Mr. Karl Hertel, Moore Qualifications (if required): insurance industry representative	Governor	6/30/2010
Postsecondary Scholarship Advisory Council (Higher Education) Ms. Connie Wittak, Flaxville Qualifications (if required): having experience in secondary education	Governor	6/20/2010
Professional Engineers and Land Surveyors (Labor and Industry) Rep. Hal Jacobson, Helena Qualifications (if required): public representative	Governor	7/1/2010
Public Defender Commission (Administration) Mr. Richard E. Gillespie, Helena Qualifications (if required): attorney nominated by the State Bar who represents criminal defense lawyers	Governor	7/1/2010
Mr. Mike Sherwood, Missoula Qualifications (if required): attorney nominated by the Montana Supreme Court	Governor	7/1/2010

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Public Defender Commission (Administration) cont.		
Mr. William Snell, Billings	Governor	7/1/2010
Qualifications (if required): employee of organization providing addictive behavior counseling		
Ms. Tara Veazey, Helena	Governor	7/1/2010
Qualifications (if required): member of an organization advocating on behalf of indigent persons		
Research and Commercialization Technology Board (Commerce)		
Mr. Michael Dolson, Plains	Governor	7/1/2010
Qualifications (if required): public member (Native American)		
State-Tribal Economic Development Commission (Commerce)		
Ms. Emorie Davis-Bird, Browning	Governor	6/30/2010
Qualifications (if required): alternate representative of the Blackfeet Tribe		
Mr. Walter White Tail Feather, Poplar	Governor	6/30/2010
Qualifications (if required): alternate representative of the Fort Peck Assiniboine & Sioux Tribes		
Mr. Rodney Miller, Wolf Point	Governor	6/30/2010
Qualifications (if required): representative of the Fort Peck Assiniboine and Sioux Tribes		
Ms. Lola Wippert, Browning	Governor	6/30/2010
Qualifications (if required): representative of the Blackfeet Tribe		
Mr. Ronald (Smiley) Kittson, Browning	Governor	6/30/2010
Qualifications (if required): alternate representative of the Blackfeet Tribe		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
State-Tribal Economic Development Commission (Commerce) cont.		
Mr. Ronald (Smiley) Kittson, Browning	Governor	6/30/2010
Qualifications (if required): representative of the Blackfeet Tribe		
Mr. Jerry Lamb, Helena	Governor	6/30/2010
Qualifications (if required): representative of the Governor's Office of Economic Development		
Teachers' Retirement Board (Administration)		
Mr. James Turcotte, Helena	Governor	7/1/2010
Qualifications (if required): public representative		
Telecommunications Advisory Council Services for Persons with Disabilities (Public Health and Human Services)		
Mr. Ron Bibler, Great Falls	Governor	7/1/2010
Qualifications (if required): individual with a hearing disability		
Ms. Linda Kirkland, Helena	Governor	7/1/2010
Qualifications (if required): agency representative		
Ms. Amber Lang, Kalispell	Governor	7/1/2010
Qualifications (if required): individual with a hearing disability		
Ms. Chris Caniglia, Helena	Governor	7/1/2010
Qualifications (if required): non-disabled business person		
Mr. Matt Bugni, Helena	Governor	7/1/2010
Qualifications (if required): agency representative		

VACANCIES ON BOARDS AND COUNCILS -- MAY 1, 2010 THROUGH JULY 31, 2010

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
Tourism Advisory Council (Commerce) Ms. Rhonda Fitzgerald, Whitefish Qualifications (if required): resident of Glacier Country	Governor	7/1/2010
Mr. Stan Ozark, Glasgow Qualifications (if required): resident of Missouri River Country	Governor	7/1/2010
Ms. Sandy Watts, Garryowen Qualifications (if required): resident of Custer Country	Governor	7/1/2010
Mr. Bill McGladdery, Butte Qualifications (if required): resident of Goldwest Country	Governor	7/1/2010
Western Interstate Commission for Higher Education (Higher Education) Sen. Dan W. Harrington, Butte Qualifications (if required): legislator	Governor	6/19/2010