

# MONTANA ADMINISTRATIVE REGISTER

## ISSUE NO. 10

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 The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted.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

Page Number

### TABLE OF CONTENTS

#### PROPOSAL NOTICE SECTION

##### EDUCATION, Department of, Title 10

(Board of Public Education)

10-54-249 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Math Content Standards and Performance Descriptors.	767- 788
10-57-250 Notice of Public Hearing on Proposed Amendment - Mentor Teachers.	789-791

##### FISH WILDLIFE AND PARKS, Department of, Title 12

12-352 (Fish, Wildlife and Parks Commission) Notice of Public Hearings on Proposed Amendment, Adoption, and Repeal - Falconry Regulation in Montana.	792-809
--	---------

##### JUSTICE, Department of, Title 23

23-19-211 Notice of Proposed Amendment - Consumer Debt Management License Fee. No Public Hearing Contemplated.	810-811
--	---------

LABOR AND INDUSTRY, Department of, Title 24

24-219-21 (Board of Social Work Examiners and Professional Counselors) Notice of Extension of Comment Period on Proposed Amendment - Definitions - Fees - Application - Licensure - Status Conversion - Continuing Education - Unprofessional Conduct - Social Work Examiners and Professional Counselors. 812-813

NATURAL RESOURCES AND CONSERVATION, Department, of Title 36

36-22-134 Notice of Public Hearing on Proposed Amendment - Filing a Change Application - Change Application - Historic Use. 814-826

PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

37-472 Notice of Public Hearing on Proposed Adoption, Amendment, and Repeal - Home Infusion Therapy (HIT). 827-843

37-473 Notice of Public Hearing on Proposed Adoption - Behavioral Health Inpatient Facilities (BHIF). 844-858

37-474 Notice of Public Hearing on Proposed Amendment - Trailer Courts and Tourist Campgrounds. 859-861

RULE ADOPTION SECTION

COMMERCE, Department of, Title 8

8-119-73 Notice of Amendment - Tourism Advisory Council. 862

FISH WILDLIFE AND PARKS, Department of, Title 12

12-350 (Fish, Wildlife and Parks Commission) Notice of Decision on Proposed Amendment - No Wake Zone on Echo Lake. 863-866

JUSTICE, Department of, Title 23

23-12-209 Notice of Amendment - Attendance at MLEA - Performance Criteria At MLEA. 867

LABOR AND INDUSTRY, Department of, Title 24

24-17-236 Corrected Notice of Amendment - Prevailing Wage Rates for Public Works Projects - Building Construction Services - Heavy Construction Services - Highway Construction Services - Nonconstruction Services. 868-869

LABOR AND INDUSTRY (Continued)

24-181-4 (Board of Private Alternative Adolescent Residential or Outdoor Programs) Notice of Amendment - Registration Fee Schedule - Licensing Fee Schedule - Renewals - Private Alternative Adolescent Residential And Outdoor Programs.	870
---	-----

SPECIAL NOTICE AND TABLE SECTION

Function of Administrative Rule Review Committee.	871-872
How to Use ARM and MAR.	873
Accumulative Table.	874-879
Boards and Councils Appointees.	880-885
Vacancies on Boards and Councils.	886-911

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I through New Rule XII,	)	PROPOSED ADOPTION,
amendment of ARM 10.54.4010	)	AMENDMENT, AND REPEAL
through 10.54.4013, 10.54.4020	)	
through 10.54.4023, 10.54.4030	)	
through 10.54.4033, and 10.54.4040	)	
through 10.54.4043, and repeal of	)	
ARM 10.54.4050 through 10.54.4053,	)	
10.54.4060 through 10.54.4063,	)	
10.54.4070 through 10.54.4073, and	)	
10.54.4087 through 10.54.4098	)	
pertaining to math content standards	)	
and performance descriptors	)	

TO: All Concerned Persons

1. On June 22, 2009, at 10:30 a.m. the Board of Public Education will hold a public hearing in the conference room at 1300 11<sup>th</sup> Avenue, Helena, Montana, to consider the proposed adoption, amendment, and repeal of the above-stated rules.

2. The Board of Public Education 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 Board of Public Education no later than 5:00 p.m. on June 8, 2009 to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@mt.gov.

3. Statement of Reasonable Necessity: The Board of Public Education has determined it is reasonable and necessary to adopt, amend, and repeal rules relating to mathematics content standards and performance descriptors pursuant to ARM 10.54.2503 Standards Review Schedule. The board has determined that to stay consistent with the legislative intent of Senate Bill 152 of the 2005 Legislative Session it must review and make contemporary amendments to its standards. The Legislature recognizes the need to reassess educational needs on a cyclical basis and the board recognizes its standards represent the minimum standards. These standards are the basis upon which a quality system is built and maintained. The board strives to conform to a five year review cycle for every chapter of accreditation. The standards review process uses context information, criteria, processes, and procedures identified by the Office of Public Instruction with input from representatives of accredited schools.

The Montana content standards for mathematics are not about mandating curriculum or recommending specific courses in Montana's schools. Instead, they

are about preparing students to work and live successfully in a society that is increasingly technical, global, and multicultural. The board has set high expectations for the performance of Montana students at all levels; it is the responsibility of local communities and districts to determine the path for their students to achieve the goals set out in these content standards and performance descriptors.

Pursuant to Article X Section 1(2) of the Constitution of the state of Montana and 20-1-501 and 20-9-309(2)(c), MCA, these new rules and amended rules incorporate the distinct and unique cultural heritage of Montana American Indians.

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

**NEW RULE I GRADE 4 PERFORMANCE DESCRIPTORS AT THE**

**ADVANCED LEVEL** (1) A fourth-grade student at the advanced level in mathematics demonstrates superior performance. He/she gives responses that exhibit advanced understanding of the problem or situation presented. The student consistently demonstrates advanced conceptualization and makes connections within and between the mathematical and real world. The student is able to apply more than one process, use multiple representations, and determine solutions accurately. Reasoning and structure of responses are clearly communicated and justified.

(a) The student demonstrates these abilities under content standard 1 in the areas of:

- (i) whole number relationships;
- (ii) estimation and operations;
- (iii) whole number concepts;
- (iv) common fractions and decimals; and
- (v) length, time, and temperature.

(b) The student demonstrates these abilities under content standard 2 in the areas of:

- (i) representing data;
- (ii) evaluating data; and
- (iii) likelihood of events.

(c) The student demonstrates these abilities under content standard 3 in the areas of:

- (i) two-dimensional attributes;
- (ii) three-dimensional attributes;
- (iii) basic transformations;
- (iv) linear measurement; and
- (v) area and perimeter.

(d) The student demonstrates these abilities under content standard 4 in the areas of:

- (i) patterns and relations;
- (ii) symbols and expressions;
- (iii) properties of number and operation;
- (iv) equivalent expressions; and

- (v) numerical modeling with manipulatives.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE II GRADE 4 PERFORMANCE DESCRIPTORS AT THE PROFICIENT LEVEL

(1) A fourth-grade student at the proficient level in mathematics demonstrates solid academic performance. He/she gives responses that exhibit clear understanding of the problem or situation presented and is able to make connections within the mathematical and/or real world. The student can determine a process and sufficiently communicate correct problem solving strategies through relevant representations. Although there may be occasional errors, these do not interfere with appropriate strategies. Solutions are reasonable and well supported.

(a) The student demonstrates these abilities under content standard 1 in the areas of:

- (i) whole number relationships;
- (ii) estimation and operations;
- (iii) whole number concepts;
- (iv) common fractions and decimals; and
- (v) length, time, and temperature.

(b) The student demonstrates these abilities under content standard 2 in the areas of:

- (i) representing data;
- (ii) evaluating data; and
- (iii) likelihood of events.

(c) The student demonstrates these abilities under content standard 3 in the areas of:

- (i) two-dimensional attributes;
- (ii) three-dimensional attributes;
- (iii) basic transformations;
- (iv) linear measurement; and
- (v) area and perimeter.

(d) The student demonstrates these abilities under content standard 4 in the areas of:

- (i) patterns and relations;
- (ii) symbols and expressions;
- (iii) properties of number and operation;
- (iv) equivalent expressions; and
- (v) numerical modeling with manipulatives.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE III GRADE 4 PERFORMANCE DESCRIPTORS AT THE NEARING PROFICIENCY LEVEL

(1) A fourth-grade student at the nearing proficiency level in mathematics demonstrates partial mastery of the prerequisite

knowledge and skills fundamental for proficiency. He/she gives responses that exhibit some understanding of the problem or situation presented and can make rudimentary connections between the mathematical and/or real world. The student struggles to communicate effectively and uses limited evidence of representations to show understanding.

(a) The student demonstrates these abilities under content standard 1 in the areas of:

- (i) whole number relationships;
- (ii) estimation and operations;
- (iii) whole number concepts;
- (iv) common fractions and decimals; and
- (v) length, time, and temperature.

(b) The student demonstrates these abilities under content standard 2 in the areas of:

- (i) representing data;
- (ii) evaluating data; and
- (iii) likelihood of events.

(c) The student demonstrates these abilities under content standard 3 in the areas of:

- (i) two-dimensional attributes;
- (ii) three-dimensional attributes;
- (iii) basic transformations;
- (iv) linear measurement; and
- (v) area and perimeter.

(d) The student demonstrates these abilities under content standard 4 in the areas of:

- (i) patterns and relations;
- (ii) symbols and expressions;
- (iii) properties of number and operation;
- (iv) equivalent expressions; and
- (v) numerical modeling with manipulatives.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE IV GRADE 4 PERFORMANCE DESCRIPTORS AT THE NOVICE LEVEL

(1) A fourth-grade student at the novice level in mathematics is beginning to attain the prerequisite knowledge and skills that are fundamental. He/she gives responses that exhibit significant difficulty in understanding basic concepts, reasoning, implementing problem solving strategies, and making connections. Basic skills, representations, structure, and process development are severely lacking even though the student may attempt to solve problems. Substantial errors and lack of communication skills hinder the student's progress.

(a) The student demonstrates these abilities under content standard 1 in the areas of:

- (i) whole number relationships;
- (ii) estimation and operations;

- (iii) whole number concepts;
- (iv) common fractions and decimals; and
- (v) length, time, and temperature.
- (b) The student demonstrates these abilities under content standard 2 in the areas of:
  - (i) representing data;
  - (ii) evaluating data; and
  - (iii) likelihood of events.
- (c) The student demonstrates these abilities under content standard 3 in the areas of:
  - (i) two-dimensional attributes;
  - (ii) three-dimensional attributes;
  - (iii) basic transformations;
  - (iv) linear measurement; and
  - (v) area and perimeter.
- (d) The student demonstrates these abilities under content standard 4 in the areas of:
  - (i) patterns and relations;
  - (ii) symbols and expressions;
  - (iii) properties of number and operation;
  - (iv) equivalent expressions; and
  - (v) numerical modeling with manipulatives.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE V GRADE 8 PERFORMANCE DESCRIPTORS AT THE ADVANCED LEVEL (1) An eighth-grade student at the advanced level in mathematics demonstrates superior performance. He/she gives responses that exhibit advanced understanding of the problem or situation presented. The student consistently demonstrates advanced conceptualization and makes connections within and between the mathematical and real world. The student is able to apply more than one process, use multiple representations, and determine solutions accurately. Reasoning and structure of responses are clearly communicated and justified.

- (a) The student demonstrates these abilities under content standard 1 in the areas of:
  - (i) rational number relationships;
  - (ii) estimation and reasonableness;
  - (iii) number theory;
  - (iv) rational number operations;
  - (v) metric and standard measurement; and
  - (vi) proportional reasoning.
- (b) The student demonstrates these abilities under content standard 2 in the areas of:
  - (i) representing and comparing data;
  - (ii) evaluating data and making conjectures; and



- (iii) finding probability and predicting.
- (c) The student demonstrates these abilities under content standard 3 in the areas of:
  - (i) properties of solids and figures;
  - (ii) congruence and similarity;
  - (iii) transformations including dilations;
  - (iv) angles, surface area, and volume; and
  - (v) justifying relationships.
- (d) The student demonstrates these abilities under content standard 4 in the areas of:
  - (i) representing and generalizing patterns;
  - (ii) linear functions;
  - (iii) multi-step equations and inequalities;
  - (iv) equivalent algebraic expressions; and
  - (v) linear modeling.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE VI GRADE 8 PERFORMANCE DESCRIPTORS AT THE PROFICIENT LEVEL (1) An eighth-grade student at the proficient level in mathematics demonstrates solid academic performance. He/she gives responses that exhibit clear understanding of the problem or situation presented and is able to make connections within the mathematical and/or real world. The student can determine a process, and sufficiently communicate correct problem solving strategies through relevant representations. Although there may be occasional errors, these do not interfere with appropriate strategies. Solutions are reasonable and well-supported.

- (a) The student demonstrates these abilities under content standard 1 in the areas of:
  - (i) rational number relationships;
  - (ii) estimation and reasonableness;
  - (iii) number theory;
  - (iv) rational number operations;
  - (v) metric and standard measurement; and
  - (vi) proportional reasoning.
- (b) The student demonstrates these abilities under content standard 2 in the areas of:
  - (i) representing and comparing data;
  - (ii) evaluating data and making conjectures; and
  - (iii) finding probability and predicting.
- (c) The student demonstrates these abilities under content standard 3 in the areas of:
  - (i) properties of solids and figures;
  - (ii) congruence and similarity;
  - (iii) transformations including dilations;
  - (iv) angles, surface area, and volume; and

- (v) justifying relationships.
- (d) The student demonstrates these abilities under content standard 4 in the areas of:
  - (i) representing and generalizing patterns;
  - (ii) linear functions;
  - (iii) multi-step equations and inequalities;
  - (iv) equivalent algebraic expressions; and
  - (v) linear modeling.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE VII GRADE 8 PERFORMANCE DESCRIPTORS AT THE NEARING PROFICIENCY LEVEL (1) An eighth-grade student at the nearing proficiency level in mathematics demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency. He/she gives responses that exhibit some understanding of the problem or situation presented and can make rudimentary connections between the mathematical and/or real world. The student struggles to communicate effectively and uses limited evidence of representations to show understanding. Although some basic reasoning skills are apparent, computational skills and problem solving strategies are insufficient. Frequent errors and lack of structure detract from mathematical knowledge and skills.

- (a) The student demonstrates these abilities under content standard 1 in the areas of:
  - (i) rational number relationships;
  - (ii) estimation and reasonableness;
  - (iii) number theory;
  - (iv) rational number operations;
  - (v) metric and standard measurement; and
  - (vi) proportional reasoning.
- (b) The student demonstrates these abilities under content standard 2 in the areas of:
  - (i) representing and comparing data;
  - (ii) evaluating data and making conjectures; and
  - (iii) finding probability and predicting.
- (c) The student demonstrates these abilities under content standard 3 in the areas of:
  - (i) properties of solids and figures;
  - (ii) congruence and similarity;
  - (iii) transformations including dilations;
  - (iv) angles, surface area, and volume; and
  - (v) justifying relationships.
- (d) The student demonstrates these abilities under content standard 4 in the areas of:
  - (i) representing and generalizing patterns;
  - (ii) linear functions;
  - (iii) multi-step equations and inequalities;

- (iv) equivalent algebraic expressions; and
- (v) linear modeling.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE VIII GRADE 8 PERFORMANCE DESCRIPTORS AT THE NOVICE LEVEL

(1) An eighth-grade student at the novice level in mathematics is beginning to attain the prerequisite knowledge and skills that are fundamental. He/she gives responses that exhibit significant difficulty in understanding basic concepts, reasoning, implementing problem solving strategies, and making connections. Basic skills, representations, structure, and process development are severely lacking even though the student may attempt to solve problems. Substantial errors and lack of communication skills hinder the student's progress.

(a) The student demonstrates these abilities under content standard 1 in the areas of:

- (i) rational number relationships;
- (ii) estimation and reasonableness;
- (iii) number theory;
- (iv) rational number operations;
- (v) metric and standard measurement; and
- (vi) proportional reasoning.

(b) The student demonstrates these abilities under content standard 2 in the areas of:

- (i) representing and comparing data;
- (ii) evaluating data and making conjectures; and
- (iii) finding probability and predicting.

(c) The student demonstrates these abilities under content standard 3 in the areas of:

- (i) properties of solids and figures;
- (ii) congruence and similarity;
- (iii) transformations including dilations;
- (iv) angles, surface area, and volume; and
- (v) justifying relationships.

(d) The student demonstrates these abilities under content standard 4 in the areas of:

- (i) representing and generalizing patterns;
- (ii) linear functions;
- (iii) multi-step equations and inequalities;
- (iv) equivalent algebraic expressions; and
- (v) linear modeling.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE IX UPON GRADUATION PERFORMANCE DESCRIPTORS AT THE ADVANCED LEVEL

(1) A graduating student at the advanced level in

mathematics demonstrates superior performance. He/she gives responses that exhibit advanced understanding of the problem or situation presented. The student consistently demonstrates advanced conceptualization and makes connections within and between the mathematical and real world. The student is able to apply more than one process, use multiple representations, and determine solutions accurately. Reasoning and structure of responses are clearly communicated and justified.

(a) The student demonstrates these abilities under content standard 1 in the areas of:

- (i) quantification;
- (ii) estimation and accuracy;
- (iii) equivalence with multiple notation;
- (iv) properties of numbers and number systems; and
- (v) modeling relationships and change.

(b) The student demonstrates these abilities under content standard 2 in the areas of:

- (i) representing and analyzing data;
- (ii) evaluating validity;
- (iii) rules of probability and expected value;
- (iv) counting methods; and
- (v) curve fitting.

(c) The student demonstrates these abilities under content standard 3 in the areas of:

- (i) conjectures and inductive reasoning;
- (ii) applications of geometric models;
- (iii) multiple geometric approaches;
- (iv) indirect measurement; and
- (v) methods of proof.

(d) The student demonstrates these abilities under content standard 4 in the areas of:

- (i) representing functions;
- (ii) variables and parameters;
- (iii) solving systems of equations and inequalities;
- (iv) families of functions and transformations; and
- (v) analyzing and conjecturing with models.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE X UPON GRADUATION PERFORMANCE DESCRIPTORS AT THE PROFICIENT LEVEL (1) A graduating student at the proficient level in mathematics demonstrates solid academic performance. He/she gives responses that exhibit clear understanding of the problem or situation presented and is able to make connections within the mathematical and/or real world. The student can determine a process and sufficiently communicate correct problem solving strategies through relevant representations. Although there may be occasional errors, these do not interfere with appropriate strategies. Solutions are reasonable and well-

supported.

(a) The student demonstrates these abilities under content standard 1 in the areas of:

- (i) quantification;
- (ii) estimation and accuracy;
- (iii) equivalence with multiple notation;
- (iv) properties of numbers and number systems; and
- (v) modeling relationships and change.

(b) The student demonstrates these abilities under content standard 2 in the areas of:

- (i) representing and analyzing data;
- (ii) evaluating validity;
- (iii) rules of probability and expected value;
- (iv) counting methods; and
- (v) curve fitting.

(c) The student demonstrates these abilities under content standard 3 in the areas of:

- (i) conjectures and inductive reasoning;
- (ii) applications of geometric models;
- (iii) multiple geometric approaches;
- (iv) indirect measurement; and
- (v) methods of proof.

(d) The student demonstrates these abilities under content standard 4 in the areas of:

- (i) representing functions;
- (ii) variables and parameters;
- (iii) solving systems of equations and inequalities;
- (iv) families of functions and transformations; and
- (v) analyzing and conjecturing with models.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE XI UPON GRADUATION PERFORMANCE DESCRIPTORS AT THE NEARING PROFICIENCY LEVEL (1) A graduating student at the nearing proficiency level in mathematics demonstrates partial mastery of the prerequisite knowledge and skills fundamental for proficiency. He/she gives responses that exhibit some understanding of the problem or situation presented and can make rudimentary connections between the mathematical and/or real world. The student struggles to communicate effectively and uses limited evidence of representations to show understanding. Although some basic reasoning skills are apparent, computational skills and problem solving strategies are insufficient. Frequent errors and lack of structure detract from mathematical knowledge and skills.

(a) The student demonstrates these abilities under content standard 1 in the areas of:

- (i) quantification;
- (ii) estimation and accuracy;

- (iii) equivalence with multiple notation;
- (iv) properties of numbers and number systems; and
- (v) modeling relationships and change.
- (b) The student demonstrates these abilities under content standard 2 in the areas of:
  - (i) representing and analyzing data;
  - (ii) evaluating validity;
  - (iii) rules of probability and expected value;
  - (iv) counting methods; and
  - (v) curve fitting.
- (c) The student demonstrates these abilities under content standard 3 in the areas of:
  - (i) conjectures and inductive reasoning;
  - (ii) applications of geometric models;
  - (iii) multiple geometric approaches;
  - (iv) indirect measurement; and
  - (v) methods of proof.
- (d) The student demonstrates these abilities under content standard 4 in the areas of:
  - (i) representing functions;
  - (ii) variables and parameters;
  - (iii) solving systems of equations and inequalities;
  - (iv) families of functions and transformations; and
  - (v) analyzing and conjecturing with models.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

NEW RULE XII UPON GRADUATION PERFORMANCE DESCRIPTORS AT THE NOVICE LEVEL (1) A graduating student at the novice level in mathematics is beginning to attain the prerequisite knowledge and skills that are fundamental. He/she gives responses that exhibit significant difficulty in understanding basic concepts, reasoning, implementing problem solving strategies, and making connections. Basic skills, representations, structure, and process development are severely lacking even though the student may attempt to solve problems. Substantial errors and lack of communication skills hinder the student's progress.

- (a) The student demonstrates these abilities under content standard 1 in the areas of:
  - (i) quantification;
  - (ii) estimation and accuracy;
  - (iii) equivalence with multiple notation;
  - (iv) properties of numbers and number systems; and
  - (v) modeling relationships and change.
- (b) The student demonstrates these abilities under content standard 2 in the areas of:
  - (i) representing and analyzing data;
  - (ii) evaluating validity;

- (iii) rules of probability and expected value;
- (iv) counting methods; and
- (v) curve fitting.
- (c) The student demonstrates these abilities under content standard 3 in the areas of:
  - (i) conjectures and inductive reasoning;
  - (ii) applications of geometric models;
  - (iii) multiple geometric approaches;
  - (iv) indirect measurement; and
  - (v) methods of proof.
- (d) The student demonstrates these abilities under content standard 4 in the areas of:
  - (i) representing functions;
  - (ii) variables and parameters;
  - (iii) solving systems of equations and inequalities;
  - (iv) families of functions and transformations; and
  - (v) analyzing and conjecturing with models.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

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

10.54.4010 MATHEMATICS CONTENT STANDARD 1 (1) To satisfy the requirements of mathematics content standard 1, a student, applying reasoning and ~~must be able to demonstrate that he/she engages in the mathematical processes of~~ problem solving, will use number sense and operations to represent numbers in multiple ways, understand relationships among numbers and number systems, make reasonable estimates, and compute fluently within a variety of relevant cultural contexts and reasoning, estimation, communication, connections and applications, ~~and uses appropriate technology.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4011 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 1 FOR THE END OF GRADE 4 (1) The benchmark for mathematics content standard 1 for a student at the end of grade 4 is the ability to:

- (a) demonstrate relationships among whole numbers; identify place value up to 100,000, and compare numbers (e.g., greater than, less than, and equal to);
- (b) estimate sums, differences, products, and quotients when solving problems; add, subtract, multiply (three-digit by two-digit factors), and divide (two-digit dividends by one-digit divisors) to solve problems; and demonstrate fluency with basic facts;
- (c) develop multiplication and division concepts, apply number and operation models and strategies, and reason and justify using properties of operations;

(d) identify and model common fractions such as, tenths, fourths, thirds, and halves and decimals such as, money and place value to 0.001, and recognize and compare equivalent representations; and

(e) select and apply appropriate standard units and tools to measure length, time, and temperature within relevant scientific and cultural situations.

~~(a) solve problems from many contexts using a variety of strategies (e.g., estimate, make a table, look for a pattern, simplify the problem) and explain the methods for solving these problems;~~

~~(b) apply estimation strategies throughout the problem-solving process;~~

~~(c) communicate mathematical ideas in a variety of ways (e.g., written, verbal, concrete, pictorial, graphical, algebraic);~~

~~(d) recognize and investigate the relevance and usefulness of mathematics through applications, both in and out of school; and~~

~~(e) select and use appropriate technology to enhance mathematical understanding. Appropriate technology may include, but is not limited to, paper and pencil, calculator, and computer.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4012 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 1 FOR THE END OF GRADE 8 (1) The benchmark for mathematics content standard 1 for a student at the end of grade 8 is the ability to:

(a) recognize, model, and compare different forms of integers and rational numbers including percents, fractions, decimals, and numbers using exponents and scientific notation;

(b) select and apply appropriate estimation strategies to judge the reasonableness of solutions to problems including those computed on a calculator; and demonstrate correct use of order of operations;

(c) use number theory concepts such as prime factorization, greatest common factor, and least common multiple in problem situations;

(d) compute fluently and solve multi-step problems using integers, fractions, decimals, and numbers in exponential form;

(e) use metric and standard units of measurement in relevant scientific and cultural situations, compare and convert within systems, and use appropriate technology; and

(f) understand and apply proportional relationships to model real world situations and to solve problems involving rates, ratios, proportions, percents, and direct variation.

~~(a) formulate and solve multi-step and nonroutine problems using a variety of strategies and generalize methods to new problem situations;~~

~~(b) select and apply appropriate estimation strategies throughout the problem-solving process;~~

~~(c) interpret and communicate mathematical ideas and logical arguments using correct mathematical terms and notations;~~

~~(d) recognize and investigate the relevance and usefulness of mathematics through applications, both in and out of school; and~~



~~(e) select and use appropriate technology to enhance mathematical understanding. Appropriate technology may include, but is not limited to, paper and pencil, calculator, computer, and data collection devices.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4013 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 1 UPON GRADUATION (1) The benchmark for mathematics content standard 1 for a student upon graduation is the ability to:

(a) use multiple notations to perform and interpret the effects of operations on very large and very small numbers with and without technology;

(b) identify situations where estimation is appropriate and determine the degree of accuracy needed for a given problem situation (and the appropriate precision in which to report answers);

(c) given a representation of a number or expression, find equivalent representations using multiple notations (e.g.,  $x$  to the  $\frac{1}{2}$  vs. the square root of  $x$  and visual representation of multiplying binomials);

(d) analyze and apply the properties of numbers and number systems; and

(e) identify givens and unknowns in familiar and unfamiliar situations (e.g., finance, culture, and nature) and describe relationships between variables.

~~(a) recognize and formulate problems from situations within and outside mathematics and apply solution strategies to those problems;~~

~~(b) select, apply, and evaluate appropriate estimation strategies throughout the problem-solving process;~~

~~(c) formulate definitions, make and justify inferences, express generalizations, and communicate mathematical ideas and relationships;~~

~~(d) apply and translate among different representations of the same problem situation or of the same mathematical concept;~~

~~(e) model connections between problem situations that arise in disciplines other than mathematics; and~~

~~(f) select and use appropriate technology to enhance mathematical understanding. Appropriate technology may include, but is not limited to, paper and pencil, calculator, computer, and data collection devices.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4020 MATHEMATICS CONTENT STANDARD 2 (1) To satisfy the requirements of mathematics content standard 2, a student, applying reasoning and problem solving, will use data representation and analysis, simulations, probability statistics, and statistical methods to evaluate information and make informed decisions within a variety of relevant cultural contexts. ~~must be able to demonstrate that he/she has an understanding of and an ability to use numbers and operations.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4021 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 2 FOR END OF GRADE 4 (1) The benchmark for mathematics content standard 2 for a student at the end of grade 4 is the ability to:

(a) collect, represent, and organize data in tables, dot plots, bar graphs, pictographs, and stem and leaf plots using technology when appropriate;

(b) solve problems and make decisions using data descriptors such as minimum, maximum, median, and mode within scientific and cultural contexts when relevant; and

(c) describe events from multicultural contexts as likely or unlikely and discuss the degree of likelihood using words such as certain, equally likely, and impossible.

~~(a) exhibit connections between the concrete and symbolic representation of a problem or concept;~~

~~(b) use the number system by counting, grouping, and applying place value concepts;~~

~~(c) model, explain, and use basic facts, the operations of addition and subtraction of whole numbers, and mental mathematics;~~

~~(d) model and explain multiplication and division of whole numbers; and~~

~~(e) model and explain part/whole relationships in everyday situations.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4022 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 2 FOR END OF GRADE 8 (1) The benchmark for mathematics content standard 2 for a student at the end of grade 8 is the ability to:

(a) collect data from a variety of contexts (e.g., science, history, and culture); and organize and represent data in box plots, scatter plots, histograms, and circle graphs using technology when appropriate;

(b) interpret, analyze, and evaluate data using mean, median, range, and quartiles to identify trends and make decisions and predictions about data within scientific and cultural contexts when relevant; and

(c) create sample spaces and simulations from events found in different cultures, determine experimental and theoretical probabilities, and use probability to make predictions.

~~(a) use the four basic operations with whole numbers, fractions, decimals, and integers;~~

~~(b) use mental mathematics and number sense in using order of operations and order relations for whole numbers, fractions, decimals, and integers;~~

~~(c) use the relationships and applications of ratio, proportion, percent, and scientific notation; and~~

~~(d) develop and apply number theory concepts (e.g., primes, factors, multiples) in real-world and mathematical problem situations.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4023 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 2 UPON GRADUATION (1) The benchmark for mathematics content standard 2 for a student upon graduation is the ability to:

(a) select, create, and compare graphical or numerical representations of data sets using technology when appropriate and reason about distributions using measures of central tendency and spread (e.g., percentiles, quartiles, inter-quartile range, and standard deviation);

(b) evaluate the validity of reports based on collected and/or published data by considering the source of the data, the design of the study, and the way data are displayed, analyzed, and interpreted;

(c) make, evaluate, and justify decisions based on probabilities in multicultural problem situations (e.g., finding expected value and using rules of probability);

(d) use technology as needed to determine the possible number of outcomes for an event or compound event using the fundamental counting principle, permutations, combinations, and other systematic counting methods; and

(e) model two-variable data using curve fitting with and without technology and write an equation for a given model and decide when or if predictions based on this equation are valid.

~~(a) use and understand the real number system, its operations, notations, and the various subsystems; and~~

~~(b) use definitions and basic operations of the complex number system.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4030 MATHEMATICS CONTENT STANDARD 3 (1) To satisfy the requirements of mathematics content standard 3, a student, applying reasoning and problem solving, will understand geometric properties, spatial relationships, and transformation of shapes, and will use spatial reasoning and geometric models to analyze mathematical situations within a variety of relevant cultural contexts. ~~must be able to demonstrate that he/she uses algebraic concepts, processes, and language to model and solve a variety of real-world and mathematical problems.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4031 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 3 FOR END OF GRADE 4 (1) The benchmark for mathematics content standard 3 for a student at the end of grade 4 is the ability to:

(a) describe, compare, and analyze attributes of two-dimensional shapes;

(b) describe attributes of three-dimensional shapes such as cubes and other rectangular prisms, pyramids, cylinders, cones, and spheres;

(c) use spatial reasoning to identify slides and flips of congruent figures within cultural and artistic contexts;

(d) estimate and measure linear attributes of objects in metric units such as centimeters and meters and customary units such as inch, foot, and yard; and

(e) define and determine area and perimeter of common polygons using concrete tools such as grid paper, objects, or technology and justify the strategy used.

~~(a) use symbols (e.g., boxes or letters) to represent numbers in simple situations;~~

~~(b) explore the use of variables and open sentences to express relationships (e.g., missing addend); and~~

~~(c) use inverse operations and other strategies to solve number sentences.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4032 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 3 FOR END OF GRADE 8 (1) The benchmark for mathematics content standard 3 for a student at the end of grade 8 is the ability to:

(a) define, classify, and compare properties of solids and plane figures, including lines and angles;

(b) use spatial reasoning to determine congruence, similarity, and symmetry of objects in mathematics, art, science, and culture;

(c) define, identify, and execute transformations including translations, rotations, reflections, and dilations with appropriate technology;

(d) measure and compute angles, perimeter, area, surface area, and volume including the use of formulas and choosing appropriate units; and

(e) develop informal arguments to verify geometric relationships and solve problems such as an informal justification of the Pythagorean Theorem in a variety of contexts.

~~(a) understand the concepts of variable, expression, and equation;~~

~~(b) represent situations and number patterns using tables, graphs, verbal rules, equations, and models;~~

~~(c) recognize and use the general properties of operations (e.g., the distributive property);~~

~~(d) solve linear equations using concrete, numerical, and algebraic methods; and~~

~~(e) investigate inequalities and nonlinear relationships informally.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4033 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 3 UPON GRADUATION (1) The benchmark for mathematics content standard 3 for a student upon graduation is the ability to:

(a) formulate and evaluate conjectures about geometric objects and their properties, with and without technology, applying inductive reasoning when appropriate;

(b) use spatial reasoning and geometric models to solve problems with and without technology in the contexts of art, science, and culture;

(c) identify, analyze, and use transformational, coordinate, and synthetic

geometric approaches to solve problems:

(d) determine measures of two- and three-dimensional objects and their elements using trigonometric ratios, proportionality, the Pythagorean Theorem, and angle relationships; and

(e) establish the validity of geometric conjectures, using deductive reasoning, indirect proof, and counterexamples, and critique arguments made by others.

~~(a) use algebra to represent patterns of change;~~

~~(b) use basic operations with algebraic expressions;~~

~~(c) solve algebraic equations and inequalities: linear, quadratic, exponential, logarithmic, and power;~~

~~(d) solve systems of algebraic equations and inequalities, including use of matrices; and~~

~~(e) use algebraic models to solve mathematical and real-world problems.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4040 MATHEMATICS CONTENT STANDARD 4 (1) To satisfy the requirements of mathematics content standard 4, a student, applying reasoning and problem solving, will use algebraic concepts and procedures to understand processes involving number, operation, and variables and will use procedures and function concepts to model the quantitative and functional relationships that describe change within a variety of relevant cultural contexts. must be able to demonstrate that he/she has an understanding of shape and an ability to use geometry.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4041 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 4 FOR END OF GRADE 4 (1) The benchmark for mathematics content standard 4 for a student at the end of grade 4 is the ability to:

(a) describe, extend, and make generalizations about geometric or numeric patterns;

(b) use letters, boxes, or symbols to represent numbers in simple expressions or equations to demonstrate a basic understanding of variables;

(c) use number patterns to investigate properties of numbers such as even or odd and properties of operations such as commutative, associative, distributive, and the multiplicative and additive identities;

(d) develop an understanding of equivalence by expressing numbers, measures, and numerical expressions involving operations in a variety of ways; and

(e) model problem situations with manipulatives or technology and use multiple representations such as words, pictures, tables, or graphs to draw conclusions using cultural contexts when relevant.

~~(a) describe, model, and classify two and three-dimensional shapes;~~

~~(b) investigate and predict results of combining, subdividing, and changing shapes; and~~

~~(c) identify lines of symmetry, congruent and similar shapes, and positional~~

relationships.

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4042 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 4 FOR END OF GRADE 8 (1) The benchmark for mathematics content standard 4 for a student at the end of grade 8 is the ability to:

(a) create and use tables, graphs or diagrams, symbolic expressions, and verbal descriptions to represent, analyze, and generalize a variety of patterns involving numbers and operations;

(b) identify linear and non-linear functional relationships and contract their properties using tables, graphs, or equations with appropriate technology;

(c) use number properties and inverse operations to solve multi-step equations and inequalities involving a single variable;

(d) recognize, simplify, and generate equivalent forms of algebraic expressions, justifying each step with properties of operations; and

(e) identify and compute rate of change/slope and intercepts from equations, graphs, and tables; model and solve contextual problems involving linear proportions or direct variation using cultural contexts when relevant.

~~(a) identify, describe, construct, and compare plane and solid geometric figures;~~

~~(b) understand and apply geometric properties and relationships (e.g., the Pythagorean theorem);~~

~~(c) represent geometric figures on a coordinate grid;~~

~~(d) explore properties and transformations of geometric figures; and~~

~~(e) use geometry as a means of describing the physical world.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4043 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 4 UPON GRADUATION (1) The benchmark for mathematics content standard 4 for a student upon graduation is the ability to:

(a) represent functions in a variety of ways including tables, graphs or diagrams, verbal descriptions, and symbolic expressions in recursive and explicit form and justify the choice of an appropriate form for solving a given problem;

(b) determine the appropriate symbolic representation of a given contextual situation (e.g., variables and parameters in equations, inequalities, functions, and matrices);

(c) solve a variety of equations, inequalities and systems of equations and inequalities, justify the solution process, and interpret the solution in context;

(d) analyze the effects of transformations on families of functions and recognize their characteristics and represent and use functions in equivalent forms to identify and perform transformations; and

(e) given data or a problem situation, select and use an appropriate function model to analyze results or make a prediction with and without technology using

cultural contexts when relevant.

- ~~(a) construct, interpret, and draw three-dimensional objects;~~
- ~~(b) classify figures in terms of congruence and similarity and apply these relationships;~~
- ~~(c) translate between synthetic and coordinate representations;~~
- ~~(d) deduce properties of figures using transformations, coordinates, and vectors in problem solving; and~~
- ~~(e) apply trigonometric ratios (sine, cosine, and tangent) to problem situations involving triangles.~~

AUTH: 20-2-114, MCA

IMP: 20-2-121, 20-3-106, 20-7-101, MCA

6. The board proposes to repeal the following rules:

10.54.4050 MATHEMATICS CONTENT STANDARD 5 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4051 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 5 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4052 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 5 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4053 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 5 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4060 MATHEMATICS CONTENT STANDARD 6 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4061 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 6 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4062 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 6 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4063 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 6 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4070 MATHEMATICS CONTENT STANDARD 7 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4071 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 7 FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4072 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 7 FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4073 BENCHMARK FOR MATHEMATICS CONTENT STANDARD 7 UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4087 ADVANCED MATHEMATICS PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4088 PROFICIENT MATHEMATICS PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4089 NEARING PROFICIENCY MATHEMATICS PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4090 NOVICE MATHEMATICS PERFORMANCE STANDARDS FOR END OF GRADE 4 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4091 ADVANCED MATHEMATICS PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4092 PROFICIENT MATHEMATICS PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4093 NEARING PROFICIENCY MATHEMATICS PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4094 NOVICE MATHEMATICS PERFORMANCE STANDARDS FOR END OF GRADE 8 AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4095 ADVANCED MATHEMATICS PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA



10.54.4096 PROFICIENT MATHEMATICS PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4097 NEARING PROFICIENCY MATHEMATICS PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

10.54.4098 NOVICE MATHEMATICS PERFORMANCE STANDARDS UPON GRADUATION AUTH: 20-2-114, MCA; IMP: 20-2-121, 20-3-106, 20-7-101, MCA

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: Steve Meloy, P.O. Box 200601, Helena, MT 59620-0601, telephone: (406) 444-6576, FAX: (406) 444-0847, e-mail: smeloy@mt.gov and must be received no later than 5:00 p.m., June 25, 2009.

8. Steve Meloy, Executive Secretary of the Board of Public Education has been designated to preside over and conduct this hearing.

9. 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 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 board.

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/ Steve Meloy  
Steve Meloy  
Rule Reviewer

/s/ Patty Myers  
Patty Myers, Chairperson  
Board of Public Education

Certified to the Secretary of State May 18, 2009.

BEFORE THE BOARD OF PUBLIC EDUCATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 10.57.412 and 10.58.527 ) PROPOSED AMENDMENT  
pertaining to mentor teachers )

TO: All Concerned Persons

1. On June 22, 2009, at 9:00 a.m., the Board of Public Education will hold a public hearing in the conference room at 1300 11<sup>th</sup> Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Board of Public Education 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 Board of Public Education no later than 5:00 p.m. on June 8, 2009, to advise us of the nature of the accommodation that you need. Please contact Steve Meloy, P.O. Box 200601, Helena, Montana, 59620-0601, telephone (406) 444-6576; fax (406) 444-0847; or e-mail smeloy@mt.gov.

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

ARM 10.57.412 CLASS 1 AND 2 ENDORSEMENTS (1) and (2) remain the same.

(3) A license holder may qualify for a statement of specialized competency by the completion of a minimum of 20 semester college credit hours or equivalency in a specific academic area as approved by the Board of Public Education. Approved areas of permissive specialized competency are: early childhood education, gifted and talented education, ~~and~~ technology in education, and mentor teacher.

(4) through (7) remain the same.

AUTH: 20-4-102, MCA

IMP: 20-4-103, 20-4-106, 20-4-108, MCA

10.58.527 AREAS OF PERMISSIVE SPECIALIZED COMPETENCY (1) through (6) remain the same.

(7) The mentor teacher permissive specialized competency program requires that successful candidates demonstrate knowledge of:

(a) the role and benefits of serving as a teacher mentor;

(b) the needs of initial educators and educator standards;

(c) the benefits and key elements of a mentoring program for the initial educator and the school district;

(d) the characteristics and behaviors of effective mentors in providing observation, support, and assistance;

(e) the characteristics and behaviors of effective mentors in providing feedback during observing and conferencing;

(f) the potential problems that can occur in a mentoring relationship and define effective responses to these problems; and

(g) best practices for creating and maintaining a safe environment for the mentee to attain and sustain a mastery level of teaching with an active and positive learning environment that supports school, district, and state curricula, including:

(i) supporting new teacher growth toward meeting the learning needs of every child; and

(ii) supporting new teacher growth toward incorporating Indian Education for All into their curricular offerings.

AUTH: 20-2-114, MCA

IMP: 20-1-501, 20-2-121, MCA

4. Statement of Reasonable Necessity: The proposed amendments to establish an Area of Specialized Permissive Competency for mentor teachers originated from research conducted by the Certification Standards and Practices Advisory Council (CSPAC). The CSPAC, as created by 2-15-1522, MCA, conducts research and makes recommendations to the Board of Public Education as authorized in 20-4-133, MCA. The proposed rules would permit individuals with a minimum of 20 semester college credits in teacher mentoring to request a statement of specialized competency to be added to their educator licenses.

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: Steve Meloy, Board of Public Education, P.O. Box 200601, Helena, MT 59620-0601; telephone (406) 444-6576; fax (406) 444-0847; or e-mail smeloy@mt.gov, and must be received no later than 5:00 p.m., June 25, 2009.

6. Steve Meloy, Executive Secretary of the Board of Public Education, has been designated to preside over and conduct this hearing.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies 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 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 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/ Steve Meloy  
Steve Meloy  
Rule Reviewer

/s/ Patty Myers  
Patty Myers, Chairperson  
Board of Public Education

Certified to the Secretary of State May 18, 2009.

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

In the matter of the amendment of	)	
ARM 12.6.1101, 12.6.1103, 12.6.1106,	)	
12.6.1109, 12.6.1112, 12.6.1116,	)	
12.6.1118, 12.6.1120, 12.6.1122,	)	NOTICE OF PUBLIC HEARINGS ON
12.6.1124, 12.6.1125, 12.6.1126,	)	PROPOSED AMENDMENT,
12.6.1127, 12.6.1128, 12.6.1130, the	)	ADOPTION, AND REPEAL
adoption of NEW RULES I - V, and the	)	
repeal of ARM 12.6.1119 and	)	
12.6.1121 regarding falconry regulation	)	
in Montana	)	

TO: All Concerned Persons

1. On June 18, 2009 at 7:00 p.m. the Fish, Wildlife and Parks Commission (commission) will hold a public hearing at the Fish, Wildlife and Parks Region 2 office located at 3201 Spurgin Road, Missoula, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

On June 22, 2009 at 7:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Region 4 office located at 4600 Giant Springs Road, Great Falls, Montana to consider the proposed amendment, adoption, and repeal of the above-stated rules.

On June 25, 2009 at 7:00 p.m. the commission will hold a public hearing at the Fish, Wildlife and Parks Region 5 office located at 2300 Lake Elmo Drive, Billings, Montana to consider the proposed amendment, adoption, and repeal 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 June 11, 2009, to advise us of the nature of the accommodation that you need. Please contact Stella Cureton, Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; fax (406) 444-7456; e-mail [scureton@mt.gov](mailto:scureton@mt.gov).

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

12.6.1101 DEFINITIONS ~~(1) The word "raptors" shall mean all birds of the orders Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls. The following raptors shall not be used for falconry:~~

~~(a) those raptors listed in 87-5-205, MCA;~~

~~(b) those raptors listed in 50 CFR part 17 as endangered or threatened;~~

~~(c) those raptors of the order Strigiformes except for the great-horned owl (Bubo virginianus).~~ For purposes of this subchapter, the following definitions apply:

~~(2) (1)~~ "Bred in captivity" or "captive-bred" means raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

~~(3) (2)~~ "Commission" means the Fish, Wildlife and Parks Commission provided for in 2-15-3402, MCA.

~~(4) (3)~~ "Department" means the Department of Fish, Wildlife and Parks provided for in 2-15-3401, MCA.

~~(5) (4)~~ "Director" means the director of Fish, Wildlife and Parks provided for in 2-15-3401, MCA.

~~(6) (5) "Falconry" means the sport of taking quarry by means of a trained raptor~~ means caring for, training, and transporting raptors for the pursuit of wild game and the hunting of wild game with raptors. Falconry includes the taking of raptors from the wild.

~~(6)~~ "Hacking" means the temporary release of a raptor held for falconry to the wild so that it must survive on its own.

~~(7)~~ "Hybrid" means the offspring of birds listed as two or more distinct species in 50 C.F.R. 10.13 of subchapter B or offspring of birds recognized by ornithological authorities as two or more distinct species listed in 50 C.F.R. 10.13 subchapter B.

~~(8)~~ "Imprint" means a bird that is hand raised in isolation from the sight of other raptors from two weeks of age until it is fully feathered.

~~(9)~~ "Livestock depredation area" means a specific geographic location in which depredation by golden eagles has been recognized. The boundaries and duration of a livestock depredation area are declared by USDA Wildlife Services or by a state governor.

~~(10)~~ "Raptor" means all birds of the order Falconiformes and Strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls. The following raptors shall not be used for falconry:

~~(a)~~ those raptors listed in 87-5-205, MCA; and

~~(b)~~ those raptors listed in 50 C.F.R. part 17 as endangered or threatened.

~~(7) (11)~~ "Service" means the Fish and Wildlife Service, U.S. Department of Interior.

~~(12)~~ "Sponsor" means a master or general falconer with a valid permit who is at least 18 years old and has at least two years experience at the general falconer level.

~~(8) (13)~~ "Warden" means a state Montana fish, wildlife and parks game warden.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-205, MCA

12.6.1103 FALCONRY PERMIT CLASSES ~~(1) There are~~ The department issues three classes of permits.

~~(a) (1)~~ Apprentice class An apprentice permittee:

~~(i) (a)~~ a permittee under this class must be at least 44 12 years old;

(b) if under 18 years of age, a parent or legal guardian, who is legally responsible for falconry activities, must sign the application;

~~(ii) (c) a permittee under this class~~ must have a sponsor who holds a general or master falconry permit for the first two years in which an apprentice permit is held, regardless of age of permittee. A sponsor may not have more than three apprentices at any one time;

~~(iii) (d) a permittee may not~~ may possess more than only one raptor as described in 50 C.F.R. 21.29 (c)(3)(i)(E) and may not obtain more than one raptor for replacement during any 12-month period;

~~(iv) a permittee shall possess only the following raptors, which must be taken from the wild: an American kestrel (Falco sparverius) or a red-tailed hawk (Buteo jamaicensis).~~

(e) does not need to capture a wild raptor; a wild raptor can be transferred to the permittee by another falconry permittee. If the apprentice permittee takes a raptor from the wild, it must be less than one year of age;

(f) may not possess a raptor taken from the wild as a nestling;

(g) may not possess a bird that is imprinted on humans; and

(h) must have the raptor facilities pass inspection before a permit may be granted.

~~(b) (2) General class~~ A general class permittee:

~~(i) (a) a permittee under this class~~ must be at least ~~48~~ 16 years old;

(b) if under 18 years of age, a parent or legal guardian, who is legally responsible for falconry activities, must sign the application;

~~(ii) (c) a permittee~~ must possess and train or hunt with a raptor for portions of at least two seasons in the practice of falconry at the apprentice level ~~or its equivalent~~ and must be recommended by the sponsor;

~~(iii) (d) a permittee shall not~~ may possess more than two up to three raptors and shall not obtain more than two raptors for replacement birds during any 12-month period;

(e) may take and possess any species of Falconiform or Strigiform except a golden eagle, a bald eagle, a white-tailed eagle, or a Steller's sea-eagle; and

(f) may use captive-bred raptors and hybrids of the species permitted to possess.

~~(iv) a permittee shall not take, transport, or possess any golden eagle or any species listed as threatened or endangered in 50 CFR 17.11.~~

~~(c) (3) Master class~~ A master class permittee:

~~(i) (a) a permittee under this class~~ must have at least five years of experience in the practice of falconry at the general class level;

(b) may possess any number of captive-bred birds or hybrids of species considered native to North America provided they are used for the sport of falconry;

~~(ii) (c)~~ shall not possess more than three five wild raptors and shall not obtain more than two raptors taken from the wild for replacement birds during any 12-month period;

~~(iii) (d) a permittee may not take from the wild any species listed as endangered in 50 C.F.R. 17.11, but may transport, or possess such species in accordance with said regulations;~~

(e) may take and possess any species of Falconiform or Strigiform except a

bald eagle;

(f) may take and possess a golden eagle, a white-tailed eagle, or a Steller's sea eagle only if meeting the qualifications set forth under (3)(h)(i);

(iv) a permittee may not take, transport, or possess any golden eagle for falconry purposes unless authorized in writing in accordance with appropriate federal regulations; and

(v) (g) a permittee shall not take from the wild in any 12-month period, as a part of the three-five-bird limitation, more than one raptor listed as threatened in 50 C.F.R. 17.11, and then only in accordance with those regulations; and

(h) may possess up to three eagles of the following species: golden eagle, white-tailed eagle, or Steller's sea eagle. The department must document the following before approving a request to possess an eagle to use in falconry:

(i) experience in handling large raptors, including information about species handled and the type and duration of the activity where the experience was gained; and

(ii) at least two letters of reference from people with experience handling and/or flying large raptors such as eagles, ferruginous hawks (*Buteo regalis*), goshawks (*Accipiter gentilis*), or great horned owls (*Bubo virginianus*). Each must contain a concise history of the author's experience with large raptors, which can include, but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors. Each letter must also assess the applicant's ability to care for eagles and fly them in falconry.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-205, 87-5-206, MCA

12.6.1106 HANDLING EQUIPMENT (1) A permittee must have jesses or the materials and equipment to make them, leash and swivel, bath container, and appropriate scales or balances for weighing raptors in the permittee's possession.

(1) The applicant must have the following items before he or she may obtain a permit:

(a) Jesses -- at least one pair of Alymeri jesses or similar type constructed of pliable, high-quality leather or suitable synthetic material to be used when any raptor is flown free; traditional one-piece jesses may be used on raptors when not being flown;

(b) leashes and swivels -- at least one strong swivel of acceptable falconry design;

(c) bath container -- at least one suitable container, two to six inches deep and wider than the length of the raptor for drinking and bathing for each raptor;

(d) outdoor perches -- at least one weathering area perch of an acceptable design for each raptor;

(e) weighing device -- a reliable scale or balance suitable for weighing the raptor(s) held and graduated to increments of not more than 1/2 ounce (15 gram).

(2) All facilities and equipment shall be kept at or above these standards at all times.

AUTH: 87-1-201, 87-5-204, MCA



IMP: 87-5-204, MCA

12.6.1109 EXAMINATION (1) ~~A permit will not be issued until the applicant has answered correctly at least 80% of the questions on a supervised examination administered by the department or a designated master falconer, relating to basic biology, care and handling of raptors, literature, laws, rules or other appropriate subject matter as approved by the service. Examinations will be administered on an "as needed" basis provided that any applicant failing to score 80% will only be allowed to retake the written examination at 60-day intervals. Applicants may not take the examination more than three times in one year. Applicants failing the written examination three times in one year will forfeit the \$25 application fee.~~

(1) Before an applicant is issued an apprentice permit he or she must correctly answer at least 80 percent of the questions on an examination administered by the department.

(2) The examination must cover care and handling of falconry raptors, federal and state laws and regulations relevant to falconry, and other appropriate subject matter.

(3) Any applicant failing to score 80 percent will only be allowed to retake the written examination at 30-day intervals. Applicants may not take the examination more than three times in one year.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1112 TAKING, POSSESSING, AND TRANSPORTING OF RAPTORS FOR FALCONRY (1) ~~Young raptors, not yet capable of flight (eyasses) may be taken from the wild only by a general or master falconer during the period from June 1 through July 15, each year.~~

~~(2) First-year (passage) raptors may be taken from the wild only during the period from September 19 through January 31.~~

~~(3) Notwithstanding, the preceding requirements, a marked or jessed raptor may be retrapped at any time.~~

~~(4) Only American kestrels (Falco sparverius) and great-horned owls (Bubo virginianus) may be taken when over one year old, except that any raptor other than an endangered or threatened species taken under a depredation (or special purpose) permit may be used for falconry by general and master falconers.~~

(1) A permittee may not intentionally capture a raptor species that their classification as a falconer does not allow them to possess. If a permittee captures such a bird, it must be released immediately.

(2) No more than two raptors may be taken from the wild each calendar year to use in falconry.

(a) Take of peregrine falcons from the wild is limited to the time period specified by commission rules. Take is limited to permittees that have received a peregrine take permit from the department and the conditions associated with that permit.

(b) Transfer of a bird taken from the wild to another permittee in the same calendar year of capture will count as one of the raptors allowed to be taken from the

wild that year for the permittee who captured the bird. It will not count as a capture by the recipient, though it will always be considered a wild bird.

(c) A general or master falconer may remove nestlings from a nest or aerie.

(d) Raptors may not be taken at any time or in any manner that violates any law of the state, tribe, or agency on whose land a permittee is trapping.

(e) A raptor taken from the wild must be reported by submitting a paper form 3-186A to the department. Reporting must be done at the first opportunity to do so, but no later than ten days after the capture of the bird.

(f) If a permittee who intends to possess a bird is present at the capture site, he or she is considered the person who removes the bird from the wild and is responsible for filing a 3-186A form reporting take of the bird from the wild even if another person captures the bird for the permittee.

(g) If a permittee is not at the immediate location where the bird is taken from the wild, the person who removes the bird from the wild must be a general or master falconer, and must report take of the bird. If that person then transfers the bird to the permittee, both must file 3-186A forms reporting the transaction at the first opportunity to do so, but no later than ten days after the transfer. The bird will count as one of the two raptors the person who took it from the wild is allowed to capture in any year. The bird will not count as a bird the permittee took from the wild. The person who takes the bird from the wild must report the take even if he or she promptly transfers the bird to the permittee.

(h) If a permittee has a long-term or permanent physical impairment that prevents the permittee from attending the capture of a species for falconry, a general or master falconer may capture a bird for the permittee. The permittee is then responsible for filing a 3-186A form reporting the take of the bird from the wild and the bird will count against the take of wild raptors that the permittee is allowed in any year.

(3) Other restrictions on taking raptors from the wild for falconry:

(a) A general or master falconer may take raptors less than one year of age from the wild. However, an American kestrel or great horned owl of any age may be taken from the wild.

(b) A master falconer authorized to possess golden eagles for use in falconry, may capture an immature or subadult golden eagle in a livestock or wildlife depredation area during the time the depredation area is in effect and only in compliance with regulations contained in 50 C.F.R. 21.29(e)(3)(iii).

(c) Recapture of a lost falconry bird can be done at anytime. Recapture of a wild bird is not considered to be taking a bird from the wild.

(d) Recapture of a raptor wearing falconry equipment or a captive-bred bird may be done at any time even if possession of that species is not allowed. The recaptured bird will not count against possession limit or the take from the wild limit. Recapture of the bird must be reported to the department no more than five working days after the recapture. The bird must be returned to the person who lost it, if that person may legally possess it. Disposition of a bird whose legal possession cannot be determined will be at the discretion of the department.

(e) A bird banded with a Federal Bird Banding Laboratory aluminum band may be taken from the wild except a banded peregrine falcon.

(f) At least one young must be left in the nest or aerie when taking a nestling.

(g) An apprentice falconer may not take a nestling from the wild.

(h) A general or master falconer with a valid federal endangered species permit and an endangered species permit from the department may take no more than one bird of a threatened species from the wild each year if the regulations in 50 C.F.R.21.17 allow it.

(4) If a raptor is injured due to falconer trapping efforts, there are two options for dealing with the injured bird:

(a) The bird may be reported as take by submitting a paper form 3-186A to the department at the first opportunity to do so, but no more than ten days after capture of the bird. The bird must be treated by a veterinarian or a permitted wildlife rehabilitator and the bird will count against the permittee's possession limit.

(b) The bird may be given directly to a veterinarian, a permitted wildlife rehabilitator, or an appropriate wildlife agency employee. It will not count against the permittee's allowed take or the number of raptors possessed.

(5) If a permittee acquires a raptor; transfers, rebands, or microchips a raptor; if a raptor is stolen; if a raptor is lost to the wild and not recovered within 30 days; or if a bird for falconry dies, the permittee must report the change within ten days by submitting a paper form 3-186A to the department.

(6) If a raptor is stolen, the theft must be reported to the department and to the fish and wildlife service regional law enforcement within ten days of the theft of the bird.

(7) A raptor of any age may be acquired directly from a rehabilitator at the discretion of the rehabilitator. A bird acquired from a rehabilitator:

(a) must be reported within ten days of the transaction by submitting a paper form 3-186A to the department.

(b) will count as one of the raptors the permittee is allowed to take from the wild that year.

AUTH: 87-1-201, 87-5-204, MCA

IMP: 87-5-204, 87-5-206, MCA

12.6.1116 FEATHERS (1) ~~Feathers that are molted, or those feathers from birds held in captivity that die, may be retained and exchanged by a permittee only for the purpose of repairing broken feathers (imping).~~

(1) A permittee may possess flight feathers for each species of raptor currently or previously in possession for the purpose of replacing a damaged feather with a molted feather (imping). Feathers for imping may be received from other permitted falconers, wildlife rehabilitators, or propagators in the United States. Feathers may not be bought, sold, or bartered.

(2) Feathers may be donated from a falconry bird, except golden eagle feathers, to any person or institution with a valid permit to have them or to any person exempt from the permit requirement under 50 C.F.R. 21.12.

(3) Except for primary or secondary flight feathers or retrices from a golden eagle, feathers that are molted or otherwise lost by a falconry bird are not required to be gathered. Feathers can be left where they fall, stored for imping, or destroyed. Molted flight feathers and retrices from a golden eagle must be collected for imping or sent to the National Eagle Repository at the following address: U.S. Fish and

Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal Building 128, Commerce City, Colorado 80022. The telephone number at the repository is 303-287-2110.

(4) If a permit expires or is revoked, all feathers of any species of falconry raptor except a golden eagle may be donated to any person or any institute exempt from the permit requirement under 50 C.F.R. 21.12 or authorized by permit to acquire and possess the feathers. Any feathers not donated must be burned or destroyed.

AUTH: 87-1-201, 87-5-204, MCA  
IMP: 87-5-204, MCA

12.6.1118 ENFORCEMENT (1) An officer of the department may inspect the falconry permittee's raptors, records, facilities or equipment at any reasonable time. Falconry birds, facilities, equipment, and records may be inspected only in the presence of the permittee during business hours on any day of the week by department officials.

AUTH: 87-1-201, 87-5-204, MCA  
IMP: 87-5-204, MCA

12.6.1120 FALCONRY PERMITS (1) The director may issue falconry permits in response to applications received on forms provided by the department, provided an applicant meets the requirements and otherwise complies with the provisions of this rule.

(a) Permits are valid for a period of three years or portion thereof, and shall expire on the date designated on the face of the permit unless amended or revoked. Permits are renewable.

(b) Only a person who is a resident of Montana as defined in section 87-2-102, MCA may apply for a permit under this rule.

(c) Applicants shall submit payment of a \$25150 state permit fee with the application, ~~together with a separate, additional check or money order made payable to "U.S. Fish and Wildlife Service" in the amount of \$25 as fee for the requisite federal falconry permit.~~

(2) The department may reinstate a lapsed falconry permit.

(a) If a permit has lapsed for fewer than five years, it may be reinstated at the level previously held if proof of certification at that level can be provided.

(b) If a permit has lapsed for five years or longer, an examination administered by the department must be taken and passed with a score of at least 80 percent to have a permit reinstated at the level previously held. Falconry facilities must also pass state inspection before a falconry bird may be possessed.

(3) The department will recognize valid falconry permits from other states while an individual is in the process of moving to Montana. Within 120 days of moving to Montana, the department must inspect falconry facilities. Once the department residency requirements are satisfied, the department will recognize time spent practicing falconry in other service-approved states and will grant permits at the same class as permits previously held.

(4) The department may grant new residents to the United States with experience in falconry a permit to practice falconry in Montana and allow them to possess a raptor for use in falconry at an appropriate level after:

(a) taking and passing the falconry examination with at least an 80 percent score to demonstrate knowledge of falconry laws and regulations;

(b) providing documentation of experience with falconry in the applicant's country of origin;

(c) construction and inspection of falconry facilities determined by the department to be in compliance with ARM 12.6.1122; and

(d) a determination by the department of the appropriate level of falconry for which the applicant is qualified.

(5) A falconer must have permits or legible copies of them in their possession if they are not at the location of their falconry facilities and are trapping, transporting, working with, or flying falconry raptors.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1122 FACILITIES ~~(1) The primary consideration for raptor housing facilities, whether indoors (mews) or outdoors (weather area), is protection from the environment, predators, and undue disturbance. The applicant shall have one or both of the following facilities:~~

~~(a) Indoor facilities (mews) shall be large enough to allow easy access for caring for the raptors housed in the facility. If more than one raptor is to be kept in the mews, raptors shall be tethered or separated by partitions and the area for each bird shall be large enough to allow the bird to fully extend its wings. There shall be at least one window, protected on the inside by vertical bars, spaced narrower than the width of the bird's body and a secure door that can be easily closed. The floor of the mews shall permit easy cleaning and shall be well drained. Adequate perches shall be provided.~~

~~(b) Outdoor facilities (weathering area) shall be fenced and covered with netting or wire, or roofed to protect the birds from disturbance and attack by predators except that perches more than 62 feet high need not be covered or roofed. The enclosed area shall be large enough to insure the birds cannot strike the fence when flying from the perch. Protection from excessive sun, wind, and inclement weather shall be provided for each bird. Adequate perches shall be provided.~~

(1) Permittees must keep all raptors held under their falconry permit in humane and healthful conditions.

(2) Whether indoors (mews) or outdoors (weathering area), raptor facilities must protect raptors from the environment, predators, and domestic animals. Permittees are responsible for the maintenance, security, and protection of raptors they possess under a permit.

(3) Permittees must have raptor housing facilities approved by the department before obtaining a bird to use in falconry. The department requires that the permittee have either an indoor or outdoor facility or both. A representative of the department, or its designee, must certify that facilities and equipment meet the following standards:

- (a) All facilities must protect raptors from predators and domestic animals.
- (b) The facility must have a suitable perch for each raptor, at least one opening for sunlight, and must provide a healthy environment for raptors.
- (c) Untethered raptors may be housed together if they are compatible with each other.
- (d) Each raptor must have an area large enough to allow it to fly if it is untethered or, if tethered, to fully extend its wings or bate (attempt to fly while tethered) without damaging its feathers or contacting other raptors.
- (e) In most cases, each raptor should have a pan of clean water available. However, at the discretion of the permittee, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.
- (f) An indoor facility must be large enough to allow easy access for the care and feeding of raptors.
  - (i) If raptors are not tethered, all walls that are not solid must be protected on the inside. Suitable materials may include vertical bars spaced narrower than the width of the body of the smallest raptor housed in the enclosure. However, heavy-duty netting or other such materials may be used to cover the walls or roof of the enclosure.
  - (ii) Acceptable indoor facilities include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and maintain healthy feathers.
- (g) A falconry raptor or raptors may be kept inside the permittee's place of residence if a suitable perch or perches are provided. If raptors are housed inside the home, windows or other openings of the structure do not need to be modified. Raptors kept in the home must be tethered when they are not being moved in or out of the location in which they are kept.
- (h) An outdoor facility must be totally enclosed, and may be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material.
- (i) The facility must be covered and have at least a covered perch to protect a raptor from predators and weather.
  - (ii) The facility must be large enough to ensure that the birds cannot strike the enclosure when flying from the perch.
- (4) Falconry raptors may be kept outside in the open if they are under watch, such as by the permittee or a family member at any location or, for example, by a designated individual in a weathering yard at a falconry meet.
- (5) A permittee must inform the department within five business days if there is a change in the location of their facilities.
- (6) Falconry facilities on property not owned by the permittee:
  - (a) must meet the standards in this rule; and
  - (b) the permittee must submit to the department a signed and dated statement showing that the permittee and the property owner agree that the falconry facilities, equipment, and raptors may be inspected without advance notice by the department at any reasonable time of day. Inspections must be in the presence of the permittee.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1124 MARKING (1) Any peregrine falcon (*Falco peregrinus*), gyrfalcon (*Falco rusticolus*), or Harris hawk (*Parabuteo unicinctus*) taken, possessed or transported shall be banded at all times by either a numbered seamless band or with a permanent, nonreusable numbered band issued by the department or the service. No raptor taken from the wild may be banded with a seamless numbered band.

(2) Any gyrfalcon taken from the wild shall be reported to the department within five days of taking.

(3) Loss or removal of any band shall be reported to the issuing office within five working days of the loss. The lost band shall be replaced by a permanent, nonreusable numbered band supplied by the department or by the service. A federal form 3-186A shall be filed in accordance with the instructions on the form reporting the loss of the banding and rebanding.

(1) If a goshawk, Harris's hawk (*Parabuteo unicinctus*), peregrine falcon (*Falco peregrinus*), or gyrfalcon (*Falco rusticolus*) is taken from the wild, acquired from a rehabilitator, or from another falconer, the raptor must be banded with a permanent, nonreusable, numbered service leg band provided by the department. An International Organization for Standardization (ISO) compliant (134.2 kHz) microchip may be purchased and implanted in the bird in lieu of a band. Contact the department for information on obtaining and disposing of bands. Within ten days from the day on which the raptor is taken from the wild, it must be reported, including band number and/or microchip information, by submitting a paper form 3-186A to the department. An appropriate band may be requested from the department in advance of any effort to capture a raptor.

(2) A raptor bred in captivity must be banded with a seamless metal band (see 50 C.F.R. 21.30) or have an implanted ISO-compliant (134.2 kHz) microchip. If a seamless band is removed or lost, a request for a replacement service nonreusable band must be requested from the department and the required information must be reported immediately upon rebanding or microchipping the raptor by submitting a paper form 3-186A to the department. A band that is removed or lost, must be replaced or an ISO-compliant (134.2 kHz) microchip must be implanted in the bird and the microchip information reported by submitting a paper form 3-186A to the department.

(3) If the band must be removed or is lost from a raptor, the loss of the band must be reported within five days, and then do at least one of the following:

(a) request a service nonreusable band from the department and submit the required information immediately upon rebanding the raptor by submitting a paper form 3-186A to the department; or

(b) purchase and implant an ISO-compliant (134.2 kHz) microchip in the bird and report the microchip information by submitting a 3-186A form to the department.

(4) A band must not be altered, defaced, or counterfeit. The rear tab of a band on a raptor taken from the wild may be removed and an imperfect surface may be smoothed if the integrity of the band or the numbering is not affected.

(5) The department may provide an exemption if health or injury problems caused by the band are documented. A copy of the exemption paperwork must be kept by the permittee when transporting or flying the raptor. If the bird is a wild

goshawk, Harris's hawk, peregrine falcon, or gyrfalcon, the band must be replaced with an ISO-compliant microchip that the service will supply to the department. The service will not provide a microchip for a wild goshawk, Harris's hawk, peregrine falcon, or gyrfalcon unless it has been demonstrated that a band causes an injury or a health problem for the bird.

(6) A raptor removed from the wild may not be banded with a seamless numbered band.

(7) Copies of all electronic database submissions documenting take, transfer, loss, rebanding, or microchipping of each falconry raptor must be kept until five years after the bird has been transferred, lost, or died.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1125 TEMPORARY HOLDING OF RAPTORS (1) A legally possessed raptor may be temporarily held by another person authorized to possess raptors if a form 3-186A and a dated and signed statement authorizing temporary possession accompany the raptor.

(2) A raptor may be transported or held in temporary facilities which shall be provided with an adequate perch and protected from extreme temperatures and excessive disturbance, for a period not to exceed 30 days.

(1) A raptor may be housed temporarily for up to 120 consecutive calendar days if the bird has a suitable perch and is protected from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(2) A permittee's raptor may be cared for by another falconry permittee for up to 120 consecutive calendar days. The permittee caring for the raptor must have a signed and dated statement authorizing temporary possession, plus a copy of form 3-186A showing they are the possessor of each of the raptors. The statement must include information about the time period of care and the allowable activities to be done with the bird.

(3) The raptors will remain on the original falconry permit and will not be counted against the possession limit of the person caring for the raptors.

(4) If the person caring for the raptors holds the appropriate level falconry permit, the raptors may be flown in an authorized manner, including hunting.

(5) The temporary care of the raptors may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency. The department will consider such instances on a case-by-case basis.

(6) Someone who does not have a falconry permit may care for falconry birds at the permittee's facilities for up to 45 consecutive calendar days.

(a) The raptors will remain on the falconry permit;

(b) the raptors must remain in the facilities;

(c) this care may be extended indefinitely in extenuating circumstances, such as illness, military service, or for a family emergency; and

(d) the person(s) caring for the raptors may not fly them for any reason.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA



12.6.1126 TRANSFER OF RAPTORS (1) Wild raptors held by a permittee may be permanently transferred to a resident authorized to possess raptors for falconry purposes provided:

(a) the permittees submit a federal form 3-186A ~~in accordance with the reporting requirements of ARM 12.6.1103;~~

(b) no money, barter or any other consideration is involved in the transfer.

(2) Wild raptors held by a permittee may be permanently transferred to a nonresident authorized to possess raptors for falconry purposes provided:

(a) the permittees submit a federal form 3-186A ~~in accordance with ARM 12.6.1103 reporting requirements;~~

(b) an export permit has been issued by the department in advance of export from the state; and

~~(c) the nonresident recipient resides in a state which provides privileges to Montana residents to conduct permitted activities comparable to activities permitted in Montana; and~~

~~(d) (c)~~ no money, barter, or any other consideration is involved in the transfer. The species and number of raptors transferred, held, or replaced is limited in accordance with the permit classes section of this regulation. ~~(ARM 12.6.1103)~~

(3) Captive-bred raptors held by a permittee may be permanently transferred to residents or nonresidents authorized to possess raptors, provided the permittees submit a federal form 3-186A in accordance with the reporting requirements of ARM 12.6.1103.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1127 TEMPORARY TRANSPORT (1) Holders of Montana falconry permits may temporarily remove raptors from Montana and return them to the state, provided all necessary permits or licenses are obtained from the states or other legal authority into which the raptors are transported.

(2) A falconer may transport a raptor if a suitable perch and protection from extreme temperatures, wind, and excessive disturbance are provided. A "giant hood" or similar container is acceptable for transporting or housing a raptor.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

12.6.1128 SALE OF RAPTORS (1) ~~A falconry permittee may not sell, purchase, barter, or offer to sell, purchase or barter any raptor unless the raptor is marked on its metatarsus by a seamless numbered band supplied by the department or the service. A permittee:~~

(a) may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands or ISO compliant microchips to other permittees who are authorized to possess the raptors.

(b) may not purchase, sell, trade, or barter wild raptors. Wild raptors may only be transferred.

AUTH: 87-5-204, MCA  
IMP: 87-5-204, MCA

12.6.1130 RELEASE OF RAPTORS ~~(1) A falconry permittee shall obtain written authorization from the director before any species not indigenous to Montana is intentionally released to the wild, at which time the marker from the released bird shall be removed and surrendered to the department. The marker from an intentionally released bird which is indigenous to Montana shall also be removed and surrendered to the department. A standard federal bird band shall be attached to any such bird by the department or an authorized federal bird bander whenever practical.~~

(1) A raptor not native to Montana or a hybrid raptor may not be released into the wild, but may be transferred to another falconry permittee.

(2) A permittee must have permission from the department to release a captive-bred raptor that is a native species to Montana.

(a) The raptor must be hacked to the wild at an appropriate time of year and location;

(b) the falconry band must be removed; and

(c) the release must be reported by submitting a paper form 3-186A to the department.

(3) A raptor taken from the wild that is a native species to Montana may be released.

(a) The raptor must be released to the wild at an appropriate time of year and location;

(b) the falconry band must be removed; and

(c) the release must be reported by submitting a paper form 3-186A to the department.

(4) Hybrid raptors may not be permanently released to the wild.

AUTH: 87-5-204, MCA  
IMP: 87-5-204, MCA

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

NEW RULE I FLYING A HYBRID RAPTOR (1) When flown free, a hybrid raptor must have at least two attached radio transmitters to locate the bird.

AUTH: 87-5-204, MCA  
IMP: 87-5-204, MCA

NEW RULE II DISPOSITION OF CARCASSES OF FALCONRY BIRDS THAT DIE (1) The carcass of a golden eagle held for falconry, including all feathers, talons, and other parts must be sent to the National Eagle Repository.

(2) The body or feathers of any other species of falconry raptor may be donated to any person or institution exempt under 50 C.F.R. 21.12 or authorized by permit to acquire and possess such parts or feathers.

(3) If a falconry bird was banded or microchipped prior to its death, a permittee who possessed the bird may keep the body of any falconry raptor except that of a golden eagle. The permittee may keep the body so that the feathers are available for imping or may have the body mounted by a taxidermist. The permittee may use the mount in giving conservation education programs. If the bird was banded, the band must be left on the body. If the bird has an implanted microchip, the microchip must be left in place.

(4) If a permittee does not wish to donate or keep the body or feathers, the body must be burned, buried, or otherwise destroyed within ten days of the death of the bird or after final examination by a veterinarian to determine cause of death. Carcasses of euthanized raptors could pose a risk of secondary poisoning of eagles and other scavengers. Appropriate precautions must be taken to avoid such poisonings.

(5) If a permittee does not donate the bird body or feathers or have the body mounted by a taxidermist, the flight feathers may be possessed from the bird for as long as the permittee has a valid falconry permit. The permittee may not buy, sell, or barter the feathers and must keep the paperwork documenting acquisition of the bird.

AUTH: 87-5-204, MCA  
IMP: 87-5-204, MCA

NEW RULE III UNINTENTIONAL TAKE OF PREY (1) If prey is killed by a falconry bird without the permittee's intent, including an animal taken outside of a regular hunting season, the permittee:

- (a) may allow the falconry bird to feed on the animal;
- (b) may not take possession of the animal; and
- (c) must report take of any federally listed threatened or endangered species to the service field office in which the kill occurred.

AUTH: 87-5-204, MCA  
IMP: 87-5-204, MCA

NEW RULE IV RAPTORS USED FOR EDUCATION (1) A general or master falconer may use a bird in conservation education programs presented in public venues.

- (a) A federal education permit is not needed to conduct conservation education activities using a falconry raptor.
- (b) An apprentice falconer may present conservation programs under the supervision of a general or master falconer.
- (c) The bird must be used primarily for falconry.
- (d) A fee may be charged for the presentation of a conservation education program. The fee may not exceed the amount required to recoup the costs of the presentation.
- (e) Conservation education programs must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation.

Presentations that do not address falconry and conservation education may not be presented.

(f) The permittee is responsible for all liability associated with conservation education activities.

(2) Photography, filming, or other such uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds, is allowable. The permittee may not be paid for these activities.

(a) Falconry raptors may not be used to make movies, commercials, or in other commercial ventures that are not related to falconry.

(b) Falconry raptors may not be used for entertainment; for advertisements; promotion or endorsement of any products, merchandise, goods or services; as a representation of any business, company, corporation, or other organization; or for promotion or endorsement of any products, merchandise, goods, services, meetings, or fairs, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(3) A general or master falconer may assist a permitted migratory bird rehabilitator to condition raptors in preparation for release to the wild. A rehabilitating bird may be kept at the falconer's facilities.

(a) The rehabilitator must provide a letter or form that identifies the bird and explains that the falconer is assisting in the raptor's rehabilitation.

(b) The falconer's facilities do not need to meet the standards and are not subject to inspection for compliance of the standards of a rehabilitator facility.

(c) A raptor possessed for the purpose of rehabilitation does not need to be added to the falconry permit. It will remain under the permit of the rehabilitator.

(d) If a raptor cannot be permanently released to the wild, it must be returned to the rehabilitator within 180 days unless the department authorizes an extension or the raptor is transferred to another permit.

(e) All raptors able to be released into wild must be released or returned to the rehabilitator for release.

(4) A master falconer may conduct abatement activities with a bird or birds possessed for falconry, with a special purpose abatement permit. With a special purpose abatement permit, payment may be received for providing abatement services. A general falconer may conduct abatement activities only as a subpermittee of the holder of the abatement permit.

AUTH: 87-5-204, MCA

IMP: 87-5-204, MCA

#### NEW RULE V TRANSFER OF RAPTORS TO ANOTHER TYPE OF PERMIT

(1) Under some circumstances a permittee may transfer a raptor to another permit type if the recipient of the bird, including the permittee, possesses the necessary permits for the other activity.

(2) A permittee may transfer a wild-caught falconry bird to a raptor propagation permit after the bird has been used in falconry for at least two years, except one year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel. Upon transfer, a copy of form 3-186A documenting acquisition of

the bird by the propagator must be provided to the federal migratory bird permit office that administers the propagation permit. The bird must be banded with a permanent, nonreusable, numbered band issued by the department.

(3) Raptors held under a falconry permit may be used for captive propagation if the person overseeing the propagation has the necessary propagation permits. The raptor does not need to be transferred from the falconry permit if it is used for fewer than eight months in a year in captive propagation. If used more than eight months, the bird must be permanently transferred to the propagation permit. The bird must then be banded with a permanent, nonreusable, numbered band issued by the department.

(4) A permittee may transfer a wild-caught bird to another permit type in less than two years, except one year for a sharp-shinned hawk, a Cooper's hawk, a merlin, or an American kestrel if the bird has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the bird can no longer be flown for falconry.

(a) When the bird is transferred, a copy of form 3-186A documenting acquisition of the bird must be provided to the federal migratory bird permit office that administers the other permit type; and

(b) a copy of the certification from the veterinarian or rehabilitator that the bird is not useable in falconry must be provided to the federal migratory bird permits office that administers the other permit type.

(5) Captive-bred falconry raptors may be transferred to another type of permit if the holder of the other permit type is authorized to possess the bird. Within ten days, the transfer must be reported by submitting a standard paper form 3-186A to the department.

AUTH: 87-5-204, MCA  
IMP: 87-5-204, MCA

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

#### 12.6.1119 PERMIT REQUIREMENTS

AUTH: 87-5-204, MCA  
IMP: 87-5-204, MCA

#### 12.6.1121 FACILITIES AND EQUIPMENT

AUTH: 87-5-204, MCA  
IMP: 87-5-204, MCA

REASONABLE NECESSITY: Falconry has been regulated by both the United States Fish and Wildlife Service (service) and the commission since the 1970s. The service published new federal regulations in October 2008 eliminating the requirement of the federal permit to practice falconry and adding a provision allowing the service to approve and certify falconry regulations adopted by the states.

Montana is proposing the amendment, adoption, and repeal of the above-stated rules to comply with the new federal regulations and to allow certification of Montana's falconry program.

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 Bette Moe, Fish, Wildlife and Parks, 1420 East 6th Avenue, PO Box 200701, Helena, MT 59624-0701; fax (406) 444-7894; e-mail [bmoe@mt.gov](mailto:bmoe@mt.gov), and must be received no later than July 2, 2009.

7. Jessica Fitzpatrick, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearings.

8. The Department of Fish, Wildlife and Parks maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the commission or department. Persons who wish to have their name added to the list shall make written request which 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 commission or department.

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

/s/ Shane Colton

Shane Colton, Chairman  
Fish, Wildlife and Parks Commission

/s/ William A. Schenk

William A. Schenk  
Rule Reviewer

Certified to the Secretary of State May 18, 2009

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the proposed	)	NOTICE OF PROPOSED
amendment of ARM 23.19.1001,	)	AMENDMENT
concerning consumer debt management	)	
license fee	)	NO PUBLIC HEARING
	)	CONTEMPLATED

TO: All Concerned Persons

1. On June 27, 2009, 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 June 15, 2009, 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](mailto:kstelling@mt.gov).

3. The rule as proposed to be amended is as follows:

23.19.1001 LICENSE FEE (1) The required license fee will be ~~\$5000~~ \$1,000.00. It must be paid every year on or before February 1.

AUTH: 30-14-2004, MCA

IMP: 30-14-2004, MCA

RATIONALE AND JUSTIFICATION: The department has investigated similar fees in other states and has concluded that Montana's fee is one of the highest in the nation. Decreasing the fee to \$1,000 will bring Montana's fee into parity with other states. Additionally, the department has analyzed its costs of administering the Montana Consumer Debt Management Services Act, and the decreased fee is commensurate with the current and anticipated costs of administering the Act.

Based on the 21 debt management companies that registered with the department in 2009, an estimated 21 companies will be affected by this proposed change. The cumulative change is estimated to be a decrease of \$84,000 in the amount of fees paid to the department.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kelley Hubbard, 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 [khubbard@mt.gov](mailto:khubbard@mt.gov), and must be received no later than 5:00 p.m. on June 25, 2009.

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 the Kelley Hubbard at the above address no later than June 25, 2009.

6. If the agency receives requests for a public hearing on the proposed action from either 10% 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 25.

7. 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.

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 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.

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/ Stuart Segrest  
STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State May 18, 2009.



BEFORE THE BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF EXTENSION OF
ARM 24.219.301 definitions,	)	COMMENT PERIOD ON
24.219.401 and 24.219.405 fees,	)	PROPOSED AMENDMENT
24.219.501 application, 24.219.504	)	
licensure, 24.219.509 status	)	
conversion, 24.219.601 application,	)	
24.219.604 licensure, 24.219.609	)	
status conversion, 24.219.2101 and	)	
24.219.2201 continuing education,	)	
24.219.2301 and 24.219.2305	)	
unprofessional conduct, pertaining to	)	
social work examiners and	)	
professional counselors	)	

TO: All Concerned Persons

1. On December 24, 2008, the Board of Social Work Examiners and Professional Counselors (board) published MAR Notice No. 24-219-21 regarding the public hearing on the proposed amendment of the above-stated rules, at page 2583 of the 2008 Montana Administrative Register, issue no. 24.

2. In response to public request, the board has decided to extend the public comment period to 5:00 P.M., June 11, 2009.

3. 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 Social Work Examiners and Professional Counselors (board) no later than 5:00 p.m., on June 9, 2009, to advise us of the nature of the accommodation that you need. Please contact Cynthia Breen, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1-800-253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail [dlibsdsdp@mt.gov](mailto:dlibsdsdp@mt.gov).

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to the board, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to [dlibsdsdp@mt.gov](mailto:dlibsdsdp@mt.gov).

BOARD OF SOCIAL WORK EXAMINERS  
AND PROFESSIONAL COUNSELORS  
LINDA CRUMMET, LCSW, 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 May 18, 2009

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

In the matter of the amendment of ARM	)	NOTICE OF PUBLIC HEARING
36.12.1901, Filing a Change Application	)	ON PROPOSED AMENDMENT
and 36.12.1902, Change Application -	)	
Historic Use	)	

To: All Concerned Persons

1. On June 29, 2009, at 1:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing in the Fred Buck Conference Room (first floor), at the Department of Natural Resources and Conservation, Water Resources Division, 1424 Ninth Avenue, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the agency no later than 5:00 p.m. June 8, 2009, to advise the agency of the nature of the accommodation that you need. Please contact Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620, telephone (406) 444-6614; fax (406) 444-0533; e-mail kovercast@mt.gov.

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

36.12.1901 FILING A CHANGE APPLICATION (1) An applicant who desires to change the point of diversion, place of use, purpose of use, or place of storage of a water right must file an application to change a water right (Form No. 606) and applicable addendum; all materials must include, but are not limited to the information required by Title 36, Chapter 12. must be filed when an applicant desires to change the point of diversion, place of use, purpose of use, or place of storage of a water right.

(2) An application for a temporary change must meet the same rule requirements as those for a permanent change application.

(3) In addition to the change application rules, a temporary change application for instream flow must submit the information required under 85-2-407, 85-2-408, and 85-2-436, MCA.

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

~~(4) Form no. 606 and applicable addendum must be filled in with the required information.~~

~~(5) The application must contain a brief narrative explaining the general nature of the requested changes to the water right and why it is being requested.~~

(6) and (7) remain the same.

(8) Multiple water rights may be changed on one application if, upon completion of a project, all of the water rights being changed accomplish a single

proposed project; the diversion, place of use, purpose, or storage information will be exactly the same for each changed water right. If not, separate applications must be filed. The applicant shall provide a chart or table of the combined water rights demonstrating how each water right both individually and cumulatively contributes to the project.

(9) remains the same.

~~(10) Calculations showing how the historic and proposed flow rate, volume, and capacity were determined must be included in the application materials and the methodology employed must be described.~~

(11) remains the same but is renumbered (10).

(11) The application must contain a narrative explaining the specific details of the requested water right change and why it is being requested.

~~(12) The proposed diverted flow rate and consumed diverted volume of water must be identified for each changed right. The diverted volume will likely be greater than the consumed volume. The consumed volume may include plant use, seepage water, wastewater, and deep percolation water. The consumed volume cannot include return flow.~~

(13) through (14)(a) remain the same.

(b) a current department generated water right abstract of each water right being changed must be submitted. The proposed changes must be noted on the abstract. The abstract should reflect how the water right would appear if the change application was granted; ;

(c) remains the same.

(d) the applicant must provide information to show that the historic flow rate diverted will be adequate, even though the additional stock tanks may be farther away from the source of supply.

(15) remains the same.

AUTH: 85-2-112, MCA

IMP: 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

36.12.1902 CHANGE APPLICATION - HISTORIC USE (1) The description of the historic information is related to a date that is dependent on the type of water right being changed. The following dates are applicable for each type of water right:

(a) historic information for a statement of claim must be described as it was used prior to July 1, 1973;

(b) historic information for a provisional permit must be described as it was used at the filing date of the completion notice;

(c) historic information for a certificate of water right must be described as it was used at the filing date of the completion notice; and

(d) historic information for an exempt or nonfiled water right must be described as it was completed prior to July 1, 1973.

(2) (4) Final water court Water Court approved stipulations, master's reports, or examination information related to the water right being changed must be submitted with the application; ; however, this information or an abstract of a water right from the department or the Montana water court Water Court by itself is not sufficient to prove the existence or extent of the historical use.

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

~~(4)~~ (3) An applicant shall compare historical acres irrigated to acres identified as irrigated in the Water Resources Survey, if available for the place of use. If the Water Resources Survey does not support the historical irrigation alleged in the application, the applicant shall explain why. Information from irrigation journals, or logs, or old aerial photographs can be submitted for consideration.

(5) For an application to change multiple irrigation water rights, the total number of acres for each water right located within the place of use must be identified.

(6) For an application to change water rights that overlap the place of use, an applicant shall include those water rights in the change application or shall explain how each of the water rights has been historically used and how the unchanged water rights will be used if the change authorization were granted. If water will continue to be used at the historic place of use, the applicant shall explain how the continued use will not increase the combined maximum diverted flow rate, the diverted volume, and the historic consumptive volume.

~~(4)~~ (7) If an An applicant shall provide substantial credible information to corroborate the historic use, including the following of each water right being changed: provides a "best available estimate" to any element or requirement in (5) through (7), an explanation of how the estimate was derived must be included. For example, best available estimates might be based on the following:

~~(a) aerial photographs depicting irrigated land;  
(b) aerial or other photographs showing diversion or conveyance structures;  
(c) Water Resources Survey book information;  
(d) Water Resources Survey field notes;  
(e) water commissioner field notes;  
(f) natural resources conservation service information;  
(g) affidavits from persons with first-hand knowledge of historic use;  
(h) calculation of historic ditch capacities;  
(i) log books or diaries of previous irrigators.; or  
(j) other information that provides independent corroboration of the historic use that allows reasonable estimates of historic diversion and historic consumption.~~

(a) water right number and the priority date;  
(b) most recent year the water right was used;  
(c) historic point of diversion;  
(d) historic period of diversion;  
(e) historic means of diversion;  
(f) historic diversion schedule and operation pattern;  
(g) means of conveyance;  
(h) historic ditch capacity;  
(i) maximum historic flow rate diverted from each point of diversion and how the amount was determined;  
(j) historic place of use for each purpose;  
(k) maximum number of acres historically irrigated;  
(l) historic period of use for each purpose;  
(m) annual or monthly historic diverted volume and how this amount was determined;

- (n) the annual or monthly historic consumptive volume for each purpose;
- (i) for irrigation, an applicant may choose to use the methodology described in (15); and
- (ii) for irrigation, an applicant who chooses not to use the methodology described in (15), shall provide the factual basis for the historic consumptive volume calculation and why the historic consumptive use is less than or greater than the methodology described in (15);
- (o) the historic efficiency including the diversion, conveyance, and overall system;
- (p) the legal land description of a reservoir;
- (q) the maximum volume in acre-feet of stored water;
- (r) evaporation loss of stored water (evaporation standards can be found in ARM 36.12.116);
- (s) maximum number of times a reservoir was filled during a year; and
- (t) maximum period of time when water was legally collected for storage.
- (8) A narrative must be included in the application materials explaining why the historic operation of the right can be considered reasonable and typical of the purpose for which the historic right was used.
- (9) The following information may help an applicant establish the requirements under (7):
  - (a) aerial photographs depicting irrigated land;
  - (i) 1979, 1997, and 2005 photos showing the irrigated land would be beneficial;
  - (b) aerial or other photographs showing diversion or conveyance structures;
  - (c) Water Resources Survey book information;
  - (d) Water Resources Survey field notes;
  - (e) water commissioner field notes;
  - (f) Natural Resources Conservation Service (NRCS) information, such as field specific soils information;
  - (g) affidavits from persons with first-hand knowledge of historic use;
  - (h) calculation of historic ditch capacities;
  - (i) description of irrigation equipment, field treatments, means of conveyance, control structures, and other onsite features related to water use;
  - (j) description of water supply availability;
  - (k) log books or diaries of previous irrigators or farm operations, crop yield records, or diversion records; or
  - (l) an evaluation of the seniority of the water right in relation to other users.
- ~~(5) The applicant shall provide a narrative of the historic use of each water right being changed. The description must be based on actual physical measurements when available and use commonly accepted hydraulic principles. The narrative must contain the following:~~
  - ~~(a) the maximum flow rate diverted from each point of diversion listed on the water right during the period of diversion;~~
  - ~~(b) total volume of water consumed for each water right during the period of diversion;~~
  - ~~(c) a description of how and when unconsumed water returns to a ground or surface water source and how that return flow volume was calculated; and~~

~~(d) documentation of the basis of all data used in the analysis, methods of analysis and calculations.~~

~~(6) The applicant shall provide written documentation explaining the historic use and how the information was acquired to substantiate the following elements of each water right proposed to be changed:~~

- ~~(a) point of diversion;~~
- ~~(b) period of diversion;~~
- ~~(c) volume used for each purpose;~~
- ~~(d) period of use for each purpose;~~
- ~~(e) place of use for each purpose;~~
- ~~(f) maximum number of acres historically irrigated;~~
- ~~(g) means of conveyance;~~
- ~~(h) location of reservoir;~~
- ~~(i) maximum volume in acre-feet of water stored;~~
- ~~(j) maximum number of times a reservoir was filled during a year; and~~
- ~~(k) maximum period of time when water was collected for storage.~~

~~(7) A narrative must be included in the application materials explaining the historic operation of the right, including flow rate, volume, period of diversion, period of use, and period of storage are reasonable and typical of the purpose for which the historic right was used.~~

(10) Calculations for each water right showing how the historic flow rate, consumed and diverted volume for each water right, and capacity were determined must be included in the application materials, and the methodology employed must be described.

(11) The annual or monthly historic diverted volume must be based on the appropriator's historic operation of their diversion, irrigation, and harvest schedule throughout the period of diversion and the period of use. If applicable, the historic operation information must include a discussion of the primary diversion from the source and secondary diversion from a ditch or reservoir.

(12) Historic consumptive volume must be based on the acre-feet of water used for the beneficial purpose, such as water transpired by growing vegetation, evaporated from soils or water surfaces, or incorporated into products that do not return to ground or surface water.

(13) The methodology in (15) may be used to determine the historic consumptive volume for irrigation. The methodology is based on data from the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), and generated using the USDA NRCS Irrigation Water Requirements (IWR) program. If the applicant chooses not to use the methodology, they shall provide evidence showing how the historical consumptive use was calculated and why that amount is less than or greater than the methodology described in (15).

(14) IWR Data for Seasonal Alfalfa Evapotranspiration County Management Factor are shown in Table 1 and may be used to identify the historic consumptive volume. If this table is used to establish the historic consumptive volume, the department will recognize that volume, unless a valid objection is received.

(15) To determine the historic consumptive volume using the table, complete the following steps:

(a) determine which weather station (column B) is the most representative for the place of use (column C). The most representative weather station may not be in the county of the place of use, but must be nearby and about the same elevation and climatic conditions as the irrigated acres. A map showing the weather stations is located on the Internet at: [http://dnrc.mt.gov/wrd/water\\_rts/default.asp](http://dnrc.mt.gov/wrd/water_rts/default.asp);

(b) find the evapotranspiration inches based on whether the historic irrigation is flood, wheeline, handline, or center pivot, to estimate the historic IWR (columns D or E);

(c) identify the county in which the irrigated acres are located to determine the county management factor percentage (column F);

(d) multiply the IWR estimate found in column D or E by the management factor percentage in column F. The result is the number of inches used per irrigated acre;

(e) multiply the number of total acres within the historic place of use by the county adjusted inches used per irrigated acre calculated in (d) above to determine the historic consumptive inches for those acres; and

(f) divide the cumulative historic consumptive inches from (e) by 12 to determine the cumulative historic consumptive acre-feet for the total acres.

**Table 1 - Montana County Weather Station IWR Data for Seasonal Alfalfa Evapotranspiration and Montana County Management Factor.**

<b>Column A</b>	<b>Column B</b>	<b>Column C</b>	<b>Column D</b>	<b>Column E</b>	<b>Column F</b>
<b>County</b>	<b>Weather Station</b>	<b>Elevation</b>	<b>IWR Flood Irrigation, Wheeline &amp; Handline Seasonal ET (inches)</b>	<b>IWR Center Pivot Irrigation Seasonal ET (inches)</b>	<b>Management Factor Percentage 1964 - 1973</b>
Beaverhead	Dillon	5239	17.05	19.78	63.7 %
	Wisdom	6060	6.72	8.82	
	Jackson	6480	7.73	9.83	
	Lakeview	6710	7.52	10.02	
	Lima	6583	12.72	15.23	
Big Horn	Busby	3430	18.96	21.87	55.4 %
	Hardin	2905	26.01	28.88	
	Hysham 25	3100	18.84	21.80	
	Wyola	3750	17.79	20.84	
	Yellowtail Dam	3305	26.12	29.83	
Blaine	Chinook	2420	19.12	22.32	58.7 %
	Harlem	2362	19.99	23.05	
Broadwater	Townsend	3840	17.93	20.77	69.2 %
	Trident	4040	19.07	22.14	
Carbon	Joliet	3776	20.94	24.03	58.3 %
	Red Lodge	5500	14.28	17.44	



Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
Carter	Ekalaka	3425	18.38	21.83	38.4 %
	Ridgeway	3320	18.70	21.83	
Cascade	Cascade 20	4600	12.83	15.67	57.3 %
	Cascade 5	3360	16.31	19.56	
	Great Falls	3675	18.21	21.37	
	Neihart	4945	10.73	14.01	
	Sun River	3340	16.68	19.59	
Chouteau	Big Sandy	2700	19.76	23.06	52.5 %
	Fort Benton	2640	20.32	23.51	
	Geraldine	3130	18.55	21.95	
	Iliad	2950	19.89	23.03	
	Loma	2700	21.00	24.14	
	Shonkin	4300	11.64	15.44	
Custer	Miles City	2628	24.89	28.21	54.5 %
	Mizpah	2480	22.14	25.32	
	Powderville	2800	23.09	26.38	
Dawson	Glendive	2076	24.08	27.54	56.8 %
Deer Lodge	No weather station				See appropriate adjacent county
Fallon	Plevna	2780	20.79	24.07	47.6 %
Fergus	Denton	3620	13.87	16.97	48.8 %
	Grass Range	3490	17.16	20.60	
	Lewistown	4167	13.96	17.25	
	Roy	3450	18.23	21.50	
	Winifred	3240	16.18	19.50	
Flathead	Creston	2949	13.49	16.70	87.6 %
	Hungry Horse Dam	3160	13.18	16.95	
	Kalispell	2972	15.21	18.10	
	Olney	3165	11.37	14.31	
	Polebridge	3600	9.36	11.87	
	West Glacier	3154	12.48	15.83	
	Whitefish	3100	14.32	17.55	
Gallatin	Bozeman Exp Farm	4775	15.41	18.48	73.5 %
	Bozeman MT	4913	16.78	20.16	

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
	State				
	Hebgen Dam	6667	9.13	12.05	
Garfield	Cohagen	2710	20.81	23.83	43.4 %
	Jordan	2661	21.91	25.07	
	Mosby	2750	22.76	26.03	
Glacier	Babb	4300	10.70	13.80	59.7 %
	Cut Bank	3855	14.54	17.50	
	Del Bonita	4340	13.10	16.17	
	East Glacier	4810	9.61	12.53	
	St Mary	4560	12.37	15.64	
Golden Valley	Ryegate	4440	16.16	19.09	62.6 %
Granite	Philipsburg Ranger Station	5270	11.83	14.46	86.5 %
Hill	Fort Assinniboine	2613	20.72	23.93	54.1 %
	Guilford	2820	18.00	20.91	
	Havre	2585	19.46	22.35	
	Simpson	2815	18.15	21.00	
Jefferson	Boulder	4904	15.78	18.50	61.0 %
Judith Basin	Moccasin Exp Station	4243	14.51	17.83	49.3 %
	Raynesford	4220	14.54	17.86	
	Stanford	4860	15.06	18.43	
Lake	Bigfork	2910	15.67	19.33	55.0 %
	Polson	2949	18.95	22.10	
	Polson Kerr Dam	2730	19.85	22.95	
	St Ignatius	2940	18.01	21.18	
Lewis & Clark	Augusta	4070	16.06	19.04	60.1 %
	Austin	4790	14.19	17.04	
	Helena	3828	18.82	21.63	
	Holter Dam	3490	22.18	25.34	
	Lincoln Ranger Station	4575	11.93	14.51	
Liberty	Chester	3132	17.79	20.62	54.8 %
	Joplin	3300	17.53	20.29	
	Tiber Dam	2850	21.41	24.29	
Lincoln	Eureka Ranger	2532	19.21	22.20	47.1 %

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
	Station				
	Fortine	3000	14.77	17.70	
	Libby Ranger Station	2096	20.06	22.86	
	Libby	3600	10.29	12.79	
	Troy	1950	18.70	21.78	
Madison	Alder	5800	13.13	15.85	65.2 %
	Ennis	4953	15.86	18.71	
	Glen	5050	16.57	19.09	
	Norris	4750	19.06	22.61	
	Twin Bridges	4777	15.75	18.30	
	Virginia City	5770	14.30	17.17	
McCone	Brockway	2630	19.12	22.14	43.7 %
	Circle	2480	20.55	23.75	
	Fort Peck Power Plant	2070	23.54	26.79	
	Vida	2400	19.93	23.30	
Meagher	Lennepe	5880	10.82	13.55	57.3 %
	Martinsdale	4800	13.83	16.71	
	White Sulphur Spr	5060	15.12	17.92	
Mineral	St Regis Ranger Stn	2680	16.54	19.26	56.1 %
	Superior	2710	20.64	23.57	
Missoula	Lindbergh Lake	4320	13.65	16.48	69.5 %
	Missoula	3420	17.52	20.50	
	Missoula WSO AP	3199	18.23	20.98	
	Potomac	3620	13.18	15.60	
	Seeley Lake Ranger Station	4100	13.85	16.55	
Musselshell	Melstone	2920	22.42	25.83	50.0 %
	Roundup	3386	22.26	25.50	
Park	Cooke City	7460	7.36	10.64	56.9 %
	Gardiner	5275	21.22	23.77	
	Livingston	4870	15.05	18.25	
	Livingston FAA AP	4656	17.11	20.25	
	Wilsall	5840	11.84	14.98	
Petroleum	Flatwillow	3133	20.63	23.78	44.0 %

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
Phillips	Content	2340	19.86	23.00	54.7 %
	Malta 35	2650	18.63	21.76	
	Malta 7	2262	19.88	23.10	
	Port of Morgan	2830	18.44	21.44	
	Saco	2180	18.61	21.56	
	Zortman	4660	12.67	16.12	
Pondera	Conrad	3550	15.57	18.40	71.4 %
	Valier	3810	16.73	19.77	
Powder River	Biddle	3597	20.24	23.45	38.5 %
	Broadus	3032	21.52	24.56	
	Moorhead	3220	22.12	25.22	
	Sonnette	3900	16.89	19.89	
Powell	Deer Lodge	4678	12.09	14.53	77.6 %
	Ovando	4109	11.41	13.77	
Prairie	Mildred	2510	21.32	24.39	59.6 %
	Terry	2248	21.21	24.26	
	Terry 21	3260	17.09	20.17	
Ravalli	Darby	3880	17.68	20.52	79.5 %
	Hamilton	3529	18.75	21.45	
	Stevensville	3380	18.16	20.67	
	Sula	4475	11.09	13.67	
	Western Ag Research	3600	18.63	21.25	
Richland	Savage	1990	21.70	25.16	56.0 %
	Sidney	1931	20.63	24.06	
Roosevelt	Bredette	2638	18.18	21.50	46.5 %
	Culbertson	1942	19.01	22.36	
	Wolf Point	1985	22.29	25.63	
Rosebud	Birney	3160	22.98	26.10	47.7 %
	Brandenberg	2770	22.32	25.38	
	Colstrip	3218	21.69	24.87	
	Forsythe	2520	23.42	26.73	
	Ingomar	2780	21.61	24.65	
	Rock Springs	3020	19.79	22.76	
Sanders	Heron	2240	13.70	16.92	58.8 %
	Thompson Falls Power	2380	21.15	24.36	

Column A	Column B	Column C	Column D	Column E	Column F
County	Weather Station	Elevation	IWR Flood Irrigation, Wheeline & Handline Seasonal ET (inches)	IWR Center Pivot Irrigation Seasonal ET (inches)	Management Factor Percentage 1964 - 1973
	Trout Cr Ranger Station	2356	15.54	18.61	
Sheridan	Medicine Lake	1975	19.82	23.14	44.8 %
	Plentywood	2063	18.86	22.15	
	Raymond Border Station	2384	17.26	20.64	
	Redstone	2300	16.22	19.36	
	Westby	2120	16.27	19.66	
Silverbow	Butte FAA AP	5545	13.61	16.22	68.8 %
	Divide	5350	14.09	16.72	
Stillwater	Columbus	3602	20.76	23.93	46.5 %
	Mystic Lake	6544	12.19	15.54	
	Nye	4840	13.39	16.73	
	Rapelje	4125	18.84	21.94	
Sweet Grass	Big Timber	4100	18.97	22.25	44.7 %
	Melville	5370	11.51	14.50	
Teton	Blackleaf	4240	13.33	16.28	68.8 %
	Choteau Airport	3845	18.88	21.83	
	Fairfield	3980	17.53	20.58	
	Gibson Dam	4724	12.23	15.22	
Toole	Goldbutte	3498	14.79	17.83	51.8 %
	Sunburst	3610	17.11	20.24	
	Sweetgrass	3466	16.32	19.80	
Treasure	Hysham	2660	23.35	26.54	53.4 %
Valley	Glasgow WSO AP	2293	21.78	24.85	57.9 %
	Hinsdale	2670	20.23	23.79	
	Opheim 10	2878	14.60	17.67	
	Opheim 16	3258	15.18	18.19	
Wheatland	Harlowton	4162	16.26	19.38	46.6 %
	Judith Gap	4573	12.37	15.36	
	Carlyle				See appropriate adjacent county
Wibaux		3030	18.19	21.49	
	Wibaux	2696	17.02	20.25	
Yellowstone	Billings Water Plant	3097	24.53	27.70	59.5 %

Column A	Column B	Column C	Column D	Column E	Column F
			<b>IWR Flood Irrigation, Wheeline &amp; Handline Seasonal ET (inches)</b>	<b>IWR Center Pivot Irrigation Seasonal ET (inches)</b>	<b>Management Factor Percentage 1964 - 1973</b>
<b>County</b>	<b>Weather Station</b>	<b>Elevation</b>			
	Billings WSO	3648	23.94	27.06	
	Huntley Exp Station	3034	20.39	23.47	

AUTH: 85-2-112, MCA

IMP: 85-2-401, 85-2-402, 85-2-407, 85-2-408, 85-2-436, MCA

**REASONABLE NECESSITY:** An applicant and the department must be certain that the historic use of a water right that is being changed is accurately known. If a change authorization is granted that exceeds the historic use of the water right being changed, adverse affect to junior or senior water rights may occur. Often, the individuals who know about the historic use are no longer available; so, there can be difficulty in determining the exact amount of water that was historically used, and how that water right was historically operated. These rules are necessary to assist the public and the department to identify a credible amount of water that may have been historically used on irrigation water rights to facilitate changes in water rights.

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 in writing to Kim Overcast, Department of Natural Resources and Conservation, 1424 Ninth Avenue, Helena, MT 59620; fax (406) 444-5918; or e-mail kovercast@mt.gov, and must be postmarked no later than June 29, 2009.

5. Kim Overcast, Department of Natural Resources and Conservation, has been designated to preside over and conduct the hearing.

6. An electronic copy of this Proposal Notice is available through the department's site on the World Wide Web at <http://www.dnrc.mt.gov>. The department strives to make the electronic copy of this Notice of Public Hearing on Proposed 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.

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

mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding conservation districts and resource development, forestry, oil and gas conservation, trust land management, water resources, or a combination thereof. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be sent or delivered to the contact person in (4) above or may be made by completing a request form at any rules hearing held by the department.

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

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Mary Sexton  
MARY SEXTON  
Director  
Natural Resources and Conservation

Anne Yates  
ANNE YATES  
Rule Reviewer

Certified to the Secretary of State May 18, 2009.

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

In the matter of the adoption of New	)	NOTICE OF PUBLIC HEARING ON
Rule I, the amendment of ARM	)	PROPOSED ADOPTION,
37.106.2401, 37.106.2404,	)	AMENDMENT, AND REPEAL
37.106.2405, 37.106.2407,	)	
37.106.2411, 37.106.2412,	)	
37.106.2415, 37.106.2416,	)	
37.106.2420, 37.106.2422,	)	
37.106.2423, 37.106.2430,	)	
37.106.2431, 37.106.2432, and	)	
37.106.2433, and the repeal of ARM	)	
37.106.2406 and 37.106.2426	)	
pertaining to home infusion therapy	)	
(HIT)	)	

TO: All Concerned Persons

1. On June 17, 2009, 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 adoption, 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 June 8, 2009, 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](mailto:dphhslegal@mt.gov).

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

RULE I INCORPORATION BY REFERENCE (1) The department adopts and incorporates by reference United States Pharmacopoeia (USP) 31 General Chapter 797 Pharmaceutical Compounding - Sterile Preparations, June 1, 2008, which sets practice standards to help ensure that compounded sterile preparations are of high quality. A copy of USP 31 General Chapter 797 Pharmaceutical Compounding - Sterile Preparations may be obtained from USP Headquarters, 12601 Twinbrook Parkway, Rockville, MD 20852-1790, telephone (800) 227-8772 or <http://www.usp.org/products/797Guidebook>.



AUTH: 50-5-103, MCA

IMP: 50-5-103, MCA

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

37.106.2401 HOME INFUSION THERAPY AGENCY: DEFINITIONS In addition to the definitions in 50-5-101, MCA, the following definitions apply to this subchapter:

(1) remains the same.

(2) "Biological safety cabinet" means a containment unit suitable for the preparation of low to moderate risk agents ~~where there is a need, according to national sanitation foundation standard 49 for class II biohazard cabinetry, as revised May 1992, for protection of the product, personnel, and environment. The department hereby adopts and incorporates by reference national sanitation foundation standard 49 for class II biohazard cabinetry, as revised May 1992, promulgated by the National Sanitation Foundation International, 3475 Plymouth Road, P.O. Box 1468, Ann Arbor, MI 48113. A copy of national sanitation foundation standard 49 may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953.~~

(3) ~~"Class 100 environment" means an atmospheric environment which contains less than 100 particles 0.5 microns in diameter per cubic foot of air.~~

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

~~(5) (4) "Enteral" means a preparation compounded in a class 100 an ISO Class 5 environment, and dispensed by a pharmacist, and administered within or by way of the intestine.~~

(5) "Home infusion therapy (HIT) services" means the preparation, administration, or furnishing of parenteral medications, or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

(6) "ISO Class 5" means a classification of air cleanliness as defined in USP 31 General Chapter 797 Pharmaceutical Compounding - Sterile Preparations.

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

~~(7) (8) "Parenteral" means a sterile preparation of drugs for injection through one or more layers of the skin with infusion administration time equal to or greater than 15 minutes determined by the recommendation of the pharmaceutical manufacturer.~~

~~(8) (9) "Pharmacist" means a natural person licensed by the Montana department of labor and industry to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons state to engage in the practice of pharmacy and who may affix to the person's name the term "R.Ph."~~

(9) (10) "Pharmacist-in-charge or their designee" means a licensed pharmacist licensed by the Montana department of labor and industry who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules

pertinent to the practice of pharmacy and the distribution of drugs, and who is personally in full and actual charge of such pharmacy.

~~(40)~~ (11) "Pharmacy" means an established ~~place~~ location, either physical or electronic, registered by the ~~Montana department of labor and industry in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold~~ Board of Pharmacy where drugs or devices are dispensed with pharmaceutical care or where pharmaceutical care is provided.

~~(41)~~ (12) "Prescribing practitioner" means a ~~practitioner authorized to prescribe by the jurisdiction in which he or she is licensed to practice the profession and acting with the scope of this authorization~~ licensed health care professional authorized by state statute or federal law to prescribe pharmaceuticals and/or treatments.

~~(42)~~ (13) "Sterile pharmaceutical or product" means a an aseptic dosage form free from living micro-organisms ~~(aseptic)~~.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2404 HOME INFUSION THERAPY AGENCY: RESPONSIBILITY FOR SERVICES (1) Where a home infusion therapy agency directly provides either the home infusion therapy services or skilled nursing services and arranges for the provision of the other services, the parties must enter into a written contract defining the nature and scope of the services to be provided by each party. The contract must:

- (a) describe the services to be provided by each party; and
- (b) specify the responsibilities of each party ~~of the parties~~ in the provision, coordination, supervision, and evaluation of the care or services provided; ~~and~~. This must include each party's role in:
  - ~~(c)~~ specify the role of the parties in:
    - (i) the patient admission process;
    - (ii) the patient assessment process;
    - (iii) the patient education process;
    - (iv) the development, review, and revision of the patient plan of care;
    - (v) the development, review, and revision of the patient ~~home care~~ medical record;
    - (vi) the provision of clinical services;
    - (vii) the timely reporting of adverse reactions to treatment, medical symptoms, or abnormal lab values;
    - (viii) the timely reporting of the patient failing to comply with the home infusion regimen;
    - ~~(vii)~~ (ix) the patient care conferences; and
    - ~~(viii)~~ (x) discharge planning.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2405 HOME INFUSION THERAPY AGENCY: ADMINISTRATOR AND PERSONNEL (1) Each home infusion therapy agency must employ an administrator who shall:

- (a) remains the same.
  - (b) be responsible for ongoing oversight of the agency's quality assessment system, including the establishment of policies and procedures which address the safe control, accountability, ~~and distribution,~~ and administration of infusion products;
  - (c) and (d) remain the same.
- (2) For a pharmacy which is licensed as a home infusion therapy agency, the pharmacist-in-charge may ~~be~~ serve as the administrator.

(3) All services provided by the home infusion therapy agency and its employees must be provided in accordance with state laws, regulations, and home infusion therapy agency policies and procedures.

(4) The home infusion therapy agency must maintain, at all times, a pharmacist-in-charge (or designee) and a Montana licensed nurse that are both accessible and physically able to respond 24 hours a day, seven days per week.

(5) The home infusion therapy agency shall document in the employee record:

- (a) all professional employee orientation;
- (b) competency assessments;
- (c) specialized training required within the respective professions; and
- (d) a current license.

(6) The pharmacist-in-charge may be assisted by supportive personnel. Supportive personnel must work under the immediate supervision of a licensed pharmacist and have specialized training in the field of home infusion therapy. The duties and responsibilities of these personnel must be consistent with their training and experience.

(7) The licensed health care professional providing skilled nursing services shall:

- (a) provide those services in accordance with the plan of care;
- (b) dictate or write clinical notes at the time of service. Clinical notes must be signed, recorded, and incorporated into the patient's medical record within three working days of providing the service;
- (c) assist in coordinating all services provided; and
- (d) notify the pharmacist, the prescribing practitioner, and the home infusion therapy agency's personnel responsible for the care of the patient, of any significant changes in the patient's condition.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2407 HOME INFUSION THERAPY AGENCY: QUALITY ASSESSMENT (1) Each home infusion therapy agency, ~~in consultation with any contracted parties, if applicable,~~ shall prepare and maintain on file an annual report of improvements made as a result of a quality assessment program. develop and implement a system of reviewing and evaluating the appropriateness and

effectiveness of patient services and the correction of deficiencies. At a minimum, the quality assessment system must:

(a) consist of an annual review of overall provider functions and a semiannual review of selected patient clinical records; and

(b) be reviewed and evaluated by a team composed of, at a minimum, a pharmacist-in-charge, a licensed health care professional, and a licensed health care professional not affiliated with the home infusion therapy agency. The evaluation will be ongoing, including sampling not initiated solely in response to a problem.

(2) The annual review of provider function must be an organized, effective and documented evaluation. At a minimum, the evaluation must include a review of the:

(a) administrative policies and procedures;

(b) personnel policies;

(c) safety management;

(d) emergency preparedness policies;

(e) clinical program policies and procedures; and

(f) durable medical equipment maintenance and procedures.

(3) The semiannual review of patient clinical records must be:

(a) both concurrent and retrospective; and

(b) performed against preset criteria of practice for each discipline providing care. Criteria of practice must include:

(i) the appropriateness of the level of care provided to protect the health and safety of patients;

(ii) the timeliness of the provision of care;

(iii) the adequacy of the care to meet the patient's needs; and

(iv) the appropriateness of the specific services provided.

(4) Each home infusion therapy agency, in consultation with any contracted parties, if applicable, shall develop and implement a quality assessment plan. The plan must include:

(a) a method for reporting results and a mechanism for taking follow up action;

(b) patient and caregiver and licensed health care professional satisfaction surveys; and

(c) methods to document medication errors and incident reporting and adverse drug reactions.

(5) Each home infusion therapy agency, in consultation with any contracted parties, if applicable, shall establish, document, and audit at regular, planned intervals, quality control procedures. Quality control procedures must be evaluated on an ongoing basis. At a minimum, quality control procedures must include:

(a) drug or product recall procedures;

(b) documentation of storage, stability, and expiration dates;

(c) documentation of equipment functioning and maintenance (such as daily refrigerator temperature logs, records for cleaning, maintenance and calibration of infusion devices);

(d) certification of laminar flow hoods and biological safety cabinets by an independent contractor, according to national sanitation foundation standard 49, for

operational efficiency at least every 12 months. Appropriate records must be maintained to document certification;

~~(e) documentation of assessment of sterile technique performed by pharmacy personnel; and~~

~~(f) procedures for suspected microbial contamination of sterile products.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2411 HOME INFUSION THERAPY AGENCY: EDUCATION SERVICES (1) Each home infusion therapy agency, and any contracted party providing services to the patient, together, shall:

(a) provide the patient or the patient's caregiver with education and counseling on proper storage, scheduling, and risks associated with specific drugs and infusion therapy in general, the proper disposal of unused or outdated medications, and document the counseling sessions in the patient's ~~home care~~ medical record; and

(b) provide to the patient and/or patient caregiver written educational material which must include at a minimum:

(i) drug information sheets for prescribed therapy;

(ii) compounding, admix technique, adding medications to solutions, and withdrawing medications from vials;

(iii) function, operation, and troubleshooting durable medical equipment when prescribed; and

(iv) supplies and training for safe and proper handling and disposal of antineoplastic, infectious, and hazardous waste.

~~(b)~~ (c) reassess on an ongoing basis, the patient's competency or the patient's caregiver's competency, in managing home infusion therapy in the home environment and document the reassessment process in the patient's ~~home care~~ medical record.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2412 HOME INFUSION THERAPY AGENCY: HOME CARE MEDICAL RECORD (1) Each home infusion therapy agency, ~~and any contracted party providing services to the patient, together,~~ shall establish and maintain for each patient accepted for care, a ~~home care~~ medical record which must be accessible to home infusion therapy personnel and which must include the following information:

(a) admission data, including the:

(i) through (v) remain the same.

~~(vi) name, address and telephone number~~ and contact information of the patient's caregiver or family member; and

~~(vii) name, address and telephone number~~ and contact information of the pharmacist-in-charge and the prescribing practitioner; and

~~(viii) admission diagnosis or pertinent health information.~~

- (b) ~~a notation of patient conditions and diagnoses which are~~ admission diagnosis and pertinent health information relevant to the plan of care;
  - (c) remains the same.
  - (d) ~~laboratory reports, if applicable; and;~~
  - (e) documentation that a list of patient rights and responsibilities have been made available to each patient or the patient's caregiver;
  - (f) the plan of care;
  - (g) clinical assessments and services documentation;
  - (h) the prescribing practitioner's order for home infusion therapy;
  - (i) a monthly clinical therapy summary for any patient receiving services 30 days or longer; and
  - (j) a discharge summary of therapy at the end of treatment.
- (2) The responsibilities of the patient, and the home infusion therapy agency, including any contracted parties, ~~and the prescribing practitioner,~~ in the areas of delivery of care and monitoring of the patient, must be clearly documented in the patient's ~~home care~~ medical record.
- (3) through (3)(k) remain the same.
- (4) All records of dispensed sterile pharmaceuticals must be a part of the patient's medical record.

AUTH: 50-5-103, MCA  
IMP: 50-5-103, 50-5-213, MCA

37.106.2415 HOME INFUSION THERAPY AGENCY: ADMINISTRATION OF MEDICATION AND TREATMENT (1) All medications and treatments administered by the home infusion therapy agency's personnel or contracted parties must be administered by a Montana licensed health care professionals.

AUTH: 50-5-103, MCA  
IMP: 50-5-103, 50-5-213, MCA

37.106.2416 HOME INFUSION THERAPY AGENCY: PARENTERAL OR ENTERAL SOLUTIONS (1) In addition to the minimum requirements for a pharmacist and a pharmacy established by Title 37, chapter 7, MCA, and ARM Title 24, chapter 174, any parenteral or enteral solution provided by the home infusion therapy agency or obtained through contract with a third party pharmacy and provided to patients of the home infusion therapy agency must be dispensed by a licensed pharmacist in a Montana licensed pharmacy, whom and which are in compliance with the requirements of ARM ~~37.106.2420, 37.106.2404, 37.106.2407, 37.106.2422, 37.106.2423, 37.106.2426, and 37.106.2430~~ through 37.106.2433 ~~in this subchapter.~~

AUTH: 50-5-103, MCA  
IMP: 50-5-103, 50-5-213, MCA

37.106.2420 HOME INFUSION THERAPY AGENCY: PHARMACY POLICY AND PROCEDURE MANUAL (1) The ~~pharmacy~~ home infusion therapy agency

shall develop a policy and procedure manual relating to sterile products and home infusion therapy. ~~The~~ for the organization and operation of the agency. A copy of the manual must be kept current at all times, and be readily available at all times, and to all who request it for inspection at the pharmacy.

(2) ~~The pharmacist in charge shall review and revise the manual on an annual basis. The manual must include an organizational chart delineating the lines of authority, responsibility, and accountability for the administration and patient care services of the agency.~~

(3) The manual must specifically detail the storage, stability, handling, compounding, labeling, dispensing, and delivery of all sterile pharmaceuticals and address requirements relating to:

(a) through (g) remain the same.

(h) the administration of parenteral therapy to include infusion devices, drug delivery systems, and first dose monitoring;

(i) through (l) remain the same.

(m) 24-hour emergency access to a pharmacist;

(n) the handling of antineoplastic agents, a description of which must include protective apparel to be worn by compounding personnel;

(o) through (x) remain the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2422 HOME INFUSION THERAPY AGENCY: PHYSICAL REQUIREMENTS FOR PHARMACIES (1) The pharmacy must have a designated area with entry restricted to designated personnel for preparing sterile products. This area must be:

(a) a separate room with a closed door, isolated from other areas with restricted entry or access, and designed to avoid unnecessary traffic and airflow disturbances from activity ~~within the controlled facility~~ as required by USP 31 General Chapter 797 Pharmaceutical Compounding - Sterile Preparations;

(b) and (c) remain the same.

(d) one with cleanable work surfaces, walls, and floors.

(2) The pharmacy preparing the sterile products must have:

(a) appropriate environmental control devices capable of maintaining at least ~~a class 100 environment~~ an ISO Class 5 in the workplace where critical activities are performed. The devices must be capable of maintaining ~~class 100 conditions~~ this condition during normal activity. Examples of appropriate devices include vertical and horizontal laminar airflow hoods and zonal laminar flow of high efficiency particulate air filtered air. All airflow hoods used by the home infusion therapy agency must be certified as able to maintain an ISO Class 5 environment as required by USP 31 General Chapter 797 Pharmaceutical Compounding - Sterile Preparations;

(b) and (c) remain the same.

(d) temperature controlled delivery containers, when appropriate necessary;

(e) infusion devices, when appropriate necessary;

(f) through (3) remain the same.

(4) The pharmacy shall maintain sufficient current reference materials relating to sterile products to meet the needs of the pharmacy personnel. ~~Reference materials must contain information on stability, incompatibilities, mixing guidelines, and the handling of antineoplastic products.~~

(5) The pharmacy shall document a chain of possession for all controlled substances including return or disposal of unused controlled substances.

(6) All pharmacies utilized by or part of a home infusion therapy agency must be able to deliver to the home infusion therapy agency patient any needed medications and therapies within 24 hours of the need being recognized. If a pharmacy is not able to ensure a 24-hour response time, a current contract with a pharmacy that is able to ensure a 24-hour response time is required, and must be kept at the home infusion therapy agency.

(7) If the home infusion therapy agency utilizes a pharmacy located outside the state of Montana, documentation must be maintained at the home infusion therapy agency site that the pharmacy utilized has a current Montana pharmacy license per Board of Pharmacy requirements, and that it meets the requirements of this rule.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2423 HOME INFUSION THERAPY AGENCY: DISPENSING OF STERILE PHARMACEUTICALS (1) through (1)(h) remain the same.

~~(2) All records of dispensed sterile pharmaceuticals must be made a part of the patient's home care record.~~

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2430 HOME INFUSION THERAPY AGENCY: LABELING

(1) Parenteral pharmaceuticals dispensed to patients must have a permanent label with the following information:

(a) ~~the name, address, and phone number~~ and contact information of the pharmacy including a phone number which provides access to a pharmacist 24 hours per day, seven days per week;

(b) through (f) remain the same.

(g) the name of each component, its strength, and amount;

(h) through (j) remain the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2431 HOME INFUSION THERAPY AGENCY: ANTINEOPLASTIC DRUGS (1) The following requirements must be met by those pharmacies that prepare antineoplastic drugs to ensure the protection of the personnel involved:

(a) All antineoplastic drugs must be compounded in a vertical flow, Class II, biological safety cabinet;



(b) Protective apparel must be worn by personnel compounding antineoplastic drugs according to the home infusion agency's policies and procedures. ~~This must include gloves, gowns with tight cuffs, and appropriate equipment as necessary;~~

(c) Appropriate safety and containment techniques for compounding antineoplastic drugs must be used in conjunction with the aseptic techniques required for preparing sterile pharmaceuticals;

(d) Written procedures for handling both major and minor spills of antineoplastic agents must be included in the policy and procedure manual; ~~and.~~

(e) remains the same.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2432 HOME INFUSION THERAPY AGENCY: DISPOSAL OF ANTINEOPLASTIC, INFECTIOUS, AND HAZARDOUS WASTES (1) Disposal of antineoplastic, infectious, and hazardous waste is governed by the Infectious Waste Management Act, Title 75, chapter 10, part 10, MCA.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2433 HOME INFUSION THERAPY AGENCY: DELIVERY OF MEDICATIONS (1) ~~The pharmacist-in-charge home infusion therapy agency~~ shall ensure that medications are ~~timely delivered~~ according to the prescribed start of therapy so that the prescription for sterile pharmaceuticals can be implemented as ordered ~~without undue delay~~. Once therapy has been initiated, ~~the pharmacy home infusion therapy agency~~ shall continue to provide sterile pharmaceuticals in a timely fashion so as not to interrupt ongoing therapy.

(2) ~~The pharmacist-in-charge shall ensure the environmental control of all products shipped. All compounded, sterile pharmaceuticals must be shipped or delivered, other than those compounded in an institutional setting, to a patient in appropriate, temperature-controlled (as defined by the United States Pharmacopeia/National Formulary) delivery containers and stored appropriately in the patient's therapy setting. If the start of therapy is to be delayed for more than two hours from the prescribed start time, the home infusion agency shall notify both the patient and the prescribing practitioner.~~

(3) and (4) remain the same.

(5) The home infusion therapy agency shall ensure the environmental control of all products shipped. All compounded, sterile pharmaceuticals must be shipped or delivered to a patient in appropriate, temperature-controlled delivery containers as defined by the United States Pharmacopeia/National Formulary and stored appropriately in the patient's therapy setting.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

5. The department proposes to repeal the following rules:

37.106.2406 HOME INFUSION THERAPY: CLINICAL SERVICES, is found on page 37-26465 of the Administrative Rules of Montana.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

37.106.2426 HOME INFUSION THERAPY: PHARMACY PERSONNEL, is found on page 37-26487 of the Administrative Rules of Montana.

AUTH: 50-5-103, MCA

IMP: 50-5-103, 50-5-213, MCA

6. The Department of Public Health and Human Services (the department) is proposing the adoption of new Rule I, the amendment of ARM 37.106.2401, 37.106.2404, 37.106.2405, 37.106.2407, 37.106.2411, 37.106.2412, 37.106.2415, 37.106.2416, 37.106.2420, 37.106.2422, 37.106.2423, 37.106.2430, 37.106.2431, 37.106.2432, and 37.106.2433, and the repeal of ARM 37.106.2406 and 37.106.2426, pertaining to home infusion. The proposed changes are necessary to reflect the evolving changes in the home infusion therapy (HIT) industry.

References are made throughout the rules to the United States Pharmacopoeia (USP) 31 797 Guidebook to Pharmaceutical Compounding - Sterile Preparations (USP 797). The USP is a nongovernmental, standards-setting organization for all prescription and over the counter medications and other health care products manufactured or sold in the United States. Use of USP 797 requirements place in rule the standards of practice that are used by pharmacies when filling home infusion therapy and other orders.

The word "agency" has been added after "home infusion therapy" in all rule catchphrases. This change is necessary to clarify that the rules pertain to agencies and not to the process of home infusion therapy, which is a pharmacological process.

"Home care record" is being replaced with the words "medical record" for accuracy in what is required to be maintained in a home infusion therapy (HIT) patient medical record. This change is necessary to broaden and improve the scope of patient care documentation enabling practitioners to provide a full continuum of care.

General amendments include reorganizing information, deleting redundancies, correcting punctuation, formatting requirements, and clarifying the process of home infusion therapy from the home infusion therapy agency providing the service.

## RULE I

The department proposes new Rule I to incorporate USP 31 General Chapter 797 Pharmaceutical Compounding - Sterile Preparations by reference. Locating the incorporated by reference material in an individual rule instead of in several rules that refer to USP 797 makes the rules more user friendly while providing the necessary information for material incorporated by reference.

#### ARM 37.106.2401

ARM 37.106.2401 is amended to include and update the definitions used in the subchapter that, except for "home infusion therapy services", are not defined in 50-5-101, MCA. To avoid confusion, the definition of home infusion therapy services is defined in both this rule and 50-5-101(26), MCA so providers and the public have easy access in determining regulatory compliance.

The reference to the National Sanitation Foundation Standard 49 is deleted and replaced by the USP 31 General Chapter 797 Pharmaceutical Compounding - Sterile Preparations which is a widely recognized industry standard. Also, outdated reference language to class 100 environment is deleted and a new ISO Class 5 definition is added.

It is necessary to amend the definition of parenteral so that the infusion time required to administer drugs for injection is determined by the recommendation of the pharmaceutical manufacturer in order to obtain the maximum benefits from the drug.

To maintain consistency and continuity with the Board of Pharmacy regulations it is necessary to revise the definitions for "pharmacist" and "pharmacy" to reflect the language found at 37-7-101, MCA.

It is necessary to amend the definition of pharmacist-in-charge for clarity and to identify a specific member of the pharmacy team responsible for the operation of the pharmacy. This designation enables members of the home infusion therapy agency, as well as others, a point of contact in the event of unforeseen issues regarding home infusion therapy.

It is necessary to amend the definition of prescribing practitioner to more specifically address the authorization of the scope of practice of the prescribing practitioner. "Sterile pharmaceutical or product" is amended to more clearly identify that the pharmaceutical or product referred to is aseptic.

#### ARM 37.106.2404

ARM 37.106.2404 is amended to improve the language structure, make provisions more specific, and require timely reporting of critical events and/or patient conditions in order to provide quality patient care.

#### ARM 37.106.2405

ARM 37.106.2405 amendments consolidate language from ARM 37.106.2405, 37.106.2406, and 37.106.2426 dealing with personnel requirements. The department is proposing to repeal ARM 37.106.2406 and 37.106.2426 in this notice. The consolidation is necessary to make the rules more user-friendly, delete repetitive and excessive information, and more accurately and clearly express the requirements for all home infusion therapy agency personnel. It is also necessary to ensure that home infusion therapy does not end with the distribution of the infusion product but includes the administration of the pharmaceutical or product since administration of drugs is included in the home infusion therapy services definition. The amendments ensure the safety, welfare, and health of the patients under the agency's care.

#### ARM 37.106.2406

The department is proposing to repeal ARM 37.106.2406 and incorporate existing text into ARM 37.106.2405 as explained regarding the amendment of ARM 37.106.2405.

#### ARM 37.106.2407

The proposed amendment to ARM 37.106.2407 replaces existing text with the requirement of an annual report of improvements made as a result of a quality assessment program. This amendment is necessary to simplify the rule, shift the responsibility for the quality assessment from the state to the actual home infusion therapy agency itself, and in doing so provides the home infusion therapy agency the flexibility to address specific quality assurance needs unique to the agency thereby benefiting the agency's patients.

#### ARM 37.106.2411

It is necessary to amend this rule to more accurately reflect educational process requirements that a home infusion therapy agency must provide to patients. Educating patients on proper disposal of unused or outdated medications is necessary for the patient's benefit. The storing of unused or outdated medications could result in harm to the patient or others. The language in ARM 37.106.2411(1)(b) was taken from ARM 37.106.2426 which deals with pharmacy personnel. Moving these provisions consolidates the educational process requirements into one rule thereby making the rules easier to use.

#### ARM 37.106.2412

It is necessary to amend ARM 37.106.2412 because it is the responsibility of the home infusion therapy agency to establish and maintain for each patient a medical record. While contracted parties may indeed contribute to that record, setting policies that establish what is required to be in that record, and maintaining that record, is the responsibility of the home infusion therapy agency. This is a necessary change in order to ensure that it is clear that the home infusion therapy

agency is the body that the state will hold accountable in maintaining a patient medical record.

During the survey process, it has been found that if the pharmacy and the nursing staff are operated from separate locations, the individual entities do not have access to the full patient medical record. Therefore, it is necessary to amend the rule to ensure continuum of care and adequate communication between professionals providing care to the patient.

It is also necessary to amend the rule to reflect changes in contact information encountered among patients, providers, etc. Since 1996, when the original rule was written, communication methods have advanced and contact information has evolved beyond address and phone numbers to include such information as fax, cell phone, or pager numbers, and e-mail addresses. Allowing additional methods of contact information makes it more convenient for providers and those to be contacted resulting in improved customer service. Also, it is necessary to amend the rule to separate admission data from additional admission documentation criteria, establish that all laboratory reports are to be made a part of the medical record, indicate that "clinical assessments and services documentation" are also an essential part of the medical record, and require that the prescribing practitioners' orders, authorizing the home infusion treatment, be included to complete the medical record. These requirements broaden and improve the scope of patient medical record documentation thereby improving the patient's continuum of care.

Several sections were previously parts of other rules but are proposed to be included in ARM 37.106.2412 because they are clearly and more accurately medical record requirements. It is necessary to include these sections in the medical records rule so all medical record requirements are located in one rule for ease of use. The section requiring records of dispensed sterile pharmaceuticals to be a part of the patient's medical record is necessary to ensure tracking of all medications.

#### ARM 37.106.2415

It is necessary to amend ARM 37.106.2415 to indicate that those administering medications within a home infusion therapy agency be licensed by the state of Montana in order to protect the patient by assuring the medication administrator is qualified to perform this duty. Through Montana's health care professional licensing laws and rules, licensees must meet these requirements thereby protecting the patient.

#### ARM 37.106.2416

It is necessary to amend ARM 37.106.2416 to protect patients by requiring that pharmacies hold a Montana pharmacy license. Through Montana's health care professional licensing laws and rules, licensees must meet these requirements thereby protecting the patient.

ARM 37.106.2420

It is necessary to amend ARM 37.106.2420 to indicate that home infusion therapy entails more than just pharmaceutical related policies and procedures. Nursing is a large component of home infusion therapy and the current rule does not indicate the requirements for nursing policies and procedures. The proposed amendments enable the incorporation of policies and procedures for pharmacy and nursing, in addition to other services the agency may provide. Requiring current policy and procedure manuals protects patients, employees, and the agency by detailing responsibilities. The current rule limits the scope of the home infusion policy and procedure manual to sterile products and home infusion therapy without regard to the various professional roles involved with the operation of the agency and delivery of services. The proposed amendments are necessary to broaden the scope and application of the agency's policies and procedures and encompass the goal of the agency's policies and procedures.

Prior to the proposed amendments, the emphasis of the rule was the availability of the policy and procedure manual for inspection purposes. The purpose of the policy and procedure manual is to provide the necessary guidance for the organization and operation of the agency. In the survey process it has been found that manuals describing the operation of the agency are not kept at the home infusion therapy agency, but at remote locations such as corporate offices, etc. This does not allow for patients, patient caregivers, employees, or contactors easy access to this information thereby creating the potential for negative consequences for those individuals. The addition of the organizational chart requirements is necessary to make home infusion therapy agencies consistent with the requirements for other health care facilities licensed by the department.

ARM 37.106.2422

It is necessary to amend ARM 37.106.2422 to emphasize and add the requirements for pharmacies to protect Montana residents receiving home infusion therapy services from out-of-state and mail order pharmaceutical companies. While it was determined to not be fair to place geographical restrictions on pharmacies, it was determined that to protect any patient receiving mail order or out-of-state therapies, a required time frame of response must be established to provide services within 24 hours, seven days a week. Negative consequences can result if delays occur once home infusion therapy has been ordered. While the department does not prohibit the use of out-of-state or mail order pharmacies for home infusion therapy agencies, it is proposed that if such a pharmacy cannot ensure a 24-hour response time that a contract with a pharmacy able to ensure such a response is maintained by the home infusion therapy agency. Additionally, it is necessary for regulatory oversight to establish by rule a mechanism by which it can be determined that those outside pharmacies are held to the same physical requirements as those utilized in-state. Additionally, the proposed amendment requires that the home infusion agency must maintain documentation of the out-of-state pharmacy's having a current Montana

pharmacy license, which is required by the Montana Board of Pharmacy, in order to ensure patient safety.

It is proposed that all horizontal and laminar airflow hoods are required to be certified to the standards set by USP 31 General Chapter 797 Pharmaceutical Compounding - Sterile Compounding. This is the current industry standard, and has been proposed to be incorporated by reference.

Other proposed amendments are necessary to update references to make rules within this subchapter consistent. Also, it is necessary to provide physical requirements for the security of controlled substances to ensure documentation of all controlled substances in the possession of the home infusion therapy agency pharmacies for accountability purposes.

#### ARM 37.106.2423

The proposed amendment to ARM 37.106.2423 is necessary to move patient medical record requirements to ARM 37.106.1212 where it is more appropriate and to keep all medical record information in one rule for ease of use.

#### ARM 37.106.2430

The proposed amendment to ARM 37.106.2430 is necessary to address new technological communication methods. Since 1996, when the original rule was written, communication methods have advanced and contact information has evolved beyond address and phone numbers to include such information as fax, cell phone, or pager numbers, and e-mail addresses. Allowing additional methods of contact information makes it more convenient for providers and those to be contacted resulting in improved customer service.

#### ARM 37.106.2431

The proposed amendment to ARM 37.106.2431 requires that the protective apparel worn when working with antineoplastic drugs be consistent with the policies and procedures established by the home infusion therapy agency in accordance with ARM 37.106.2420. This amendment is necessary to eliminate confusion and potential conflicts between rule requirements.

#### ARM 37.106.2433

It is necessary to amend ARM 37.106.2433 to identify that it is the home infusion therapy agency that is responsible for the delivery of therapy as prescribed, and that once therapy has started, the home infusion therapy agency must continue delivering the therapy in a manner that will not interrupt the ongoing therapy. Confusion has resulted by the previous language indicating that the pharmacist-in-charge is responsible for therapy delivery. It is also necessary to include new

language to place accountability on the home infusion therapy agency to provide for continuity of care by requiring notice of start of therapy delays.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., June 25, 2009.

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/ Lisa Swanson  
Rule Reviewer

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

Certified to the Secretary of State May 18, 2009



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

In the matter of the adoption of New     )  
Rules I through XXVII pertaining to     )  
behavioral health inpatient facilities     )  
(BHIF)     )

NOTICE OF PUBLIC HEARING ON  
PROPOSED ADOPTION

TO: All Concerned Persons

1. On June 19, 2009, at 11:00 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 adoption 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 June 10, 2009, 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 adopted provide as follows:

RULE I SCOPE (1) A behavioral health inpatient facility (BHIF) is intended to provide secured inpatient psychiatric treatment for up to 16 persons, 18 years of age or older, involuntarily committed or detained, or to persons seeking treatment voluntarily. A BHIF is not subject to hospital EMTALA regulations. While a BHIF is defined at 53-21-102, MCA, as a mental health facility, a BHIF shall be subject to all health care facility/service standards found at Title 50, chapter 5, parts 1 and 2, MCA, in order to be licensed.

AUTH: 50-5-103, 53-21-194, MCA  
IMP: 50-5-103, 53-21-101, 53-21-194, MCA

RULE II PURPOSE (1) The purpose of these rules is to establish minimum state health care facility/service licensing standards for secured nonhospital based, acute inpatient psychiatric treatment for persons, who may also have co-occurring substance use disorders; who are involuntarily committed or detained; or to persons seeking behavioral health treatment voluntarily. While a BHIF is not a hospital, it may be collocated with a hospital.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE III APPLICATION OF OTHER RULES (1) To the extent that other licensure rules in ARM Title 37, chapter 106, subchapter 3 conflict with the terms of this subchapter, the terms of this subchapter shall apply to a behavioral health inpatient facility.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE IV DEFINITIONS For the purposes of this subchapter, the following definitions apply:

(1) "Administrator" means the person designated on the facility application or by written notice to the department as the person responsible for the daily operation of the facility and for the daily inpatient treatment provided in the facility.

(2) "Assessment" means an active process that utilizes a multidisciplinary team throughout the care and treatment of an individual.

(3) "BHIF" means behavioral health inpatient facility as defined at 53-21-102, MCA.

(4) "Clinical record" means a written document which is complete, current, and contains the information required by 53-21-165, MCA.

(5) "Emergency situation" has the meaning assigned to it by 53-21-102, MCA.

(6) "Governing body" means a group of designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operations of the facility.

(7) "Licensed health care professional" means a licensed health care professional as defined at 50-5-101, MCA.

(8) "Medical director" means a physician, psychiatrist, or advanced practice registered nurse who oversees the medical care and other designated care and services in a behavioral health inpatient facility. The medical director is responsible for coordinating medical care and helping to develop, implement, and evaluate patient care policies and procedures that reflect current standards of practice.

(9) "Mental health professional" means a mental health professional as defined at 53-21-102, MCA.

(10) "Professional person" means a professional person as defined at 53-21-102, MCA.

(11) "Supervisor" means a site based certified mental health professional person.

(12) "Treatment plan" means a planned program of active treatment developed by a multidisciplinary team to meet an individual's recovery and care.

AUTH: 53-21-194, MCA

IMP: 50-5-101, 53-21-102, 53-21-194, MCA

RULE V LICENSE APPLICATION PROCESS (1) Application for a health care facility/service license accompanied by the required fee shall be made to the

Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, 2401 Colonial Drive, P.O. Box 202953, Helena, MT 59620-2953 upon forms provided by the department and shall include full and complete information as to:

- (a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association; or the name and address of each officer if a corporation;
  - (b) the location of the facility;
  - (c) the name of the person or persons who will manage or supervise the facility;
  - (d) the number and type of patients or residents for which care is provided;
  - (e) any information which the department may require pertaining to the number, experience, and training of employees; and
  - (f) information on ownership, contract, or lease agreement if operated by a person other than the owner.
- (2) The fee for licensure is \$20.00.
- (3) Every facility shall have a distinct identification or name and shall notify the department in writing within 30 days prior to changing such identification or name, changing ownership, or relocating the facility.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE VI GOVERNING BODY (1) The licensee must establish a governing body with responsibility for operating and maintaining the BHIF. The governing body must include the facility's medical director and the facility administrator. The governing body provides organizational guidance and oversight to ensure the provision of safe, effective patient treatment and care to include but not limited to:

- (a) adopting, reviewing, and updating as necessary, at least on an annual basis, policies that:
  - (i) govern the organization and functions of the BHIF;
  - (ii) provide a process for grievance and conflict resolution for both staff and patients; and
  - (iii) provide clear lines of authority for administering, managing, and operating the facility.
- (b) establishing procedures for recruiting, hiring, and at least annually evaluating the qualified administrator to assure implementation of the facility goals, objectives, and policies and procedures as approved by the governing body;
- (c) review all written facility policies and procedures, to ensure they implement all rules and regulations; are current; known to all staff, and available to all staff, patients, law enforcement, or the public; and
- (d) approving facility human resource procedures to assure the facility establishes safe hiring and continued employment practices.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE VII MEDICAL DIRECTOR (1) Each facility shall employ or contract with a medical director who shall:

- (a) coordinate with and advise the staff of the facility on clinical matters;
  - (b) provide direction, consultation, and training regarding the facility programs and operations as needed;
  - (c) act as a liaison for the facility with community physicians, hospital staff, and other professionals and agencies with regard to psychiatric services; and
  - (d) ensure the quality of treatment and related services through participation in the facility quality assurance process.
- (2) The facility physician, psychiatrist, or advanced practice registered nurse may also serve as the facility medical director.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE VIII ADMINISTRATOR RESPONSIBILITIES (1) Each facility shall employ an administrator who shall:

- (a) be responsible for operation of the facility at all times and shall ensure 24-hour supervision of the patients;
  - (b) maintain daily overall responsibility for the facility operations;
  - (c) develop and oversee the implementation of all policies and procedures pertaining to the operation and services of the facility;
  - (d) establish written policies and procedures for all facility human resource services;
  - (e) establish a process for patient complaints and grievances, to include an opportunity for appeal, and to inform patients of the availability of advocacy organizations to assist them;
  - (f) establish a patient incident report file on all patient incidents or allegation of abuse;
  - (g) develop and maintain an organizational chart that delineates the current lines of authority, responsibility, and accountability for the administration and provision of all facility patient treatment programs services; and
  - (h) develop and implement written orientation and training procedures on all facility policies and procedures for all employees or contractors, relief workers, temporary employees, students, interns, volunteers, and trainees to include but not limited to:
    - (i) defining the responsibilities, limitations, and supervision of students, interns, and volunteers working for the BHIF; and
    - (ii) verifying each professional staff member's credentials, when hired, and annually thereafter, to ensure the continued credentialing of required licenses.
- (2) The administrator shall develop policies and procedures for screening, hiring, and assessing staff which include practices that assist the employer in identifying employees that may pose risk or threat to the health, safety, or welfare of any resident and provide written documentation of findings and the outcome in the employee's file.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE IX ADMINISTRATOR ABSENCE (1) In the absence of the administrator, a staff member must be designated to oversee the operation of the facility during the administrator's absence. The administrator or designee shall be in charge, on call and physically available on a daily basis as needed, and shall ensure there are sufficient, qualified staff so that the care, active treatment, health, welfare, and safety needs of the residents are met at all times.

(2) If the administrator will be absent from the facility for more than 30 consecutive calendar days, the department shall be given written notice of the individual who has been appointed the designee.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE X WRITTEN POLICIES AND PROCEDURES (1) Each BHIF shall maintain a policy and procedure manual. The policy and procedure manual shall be reviewed and updated as necessary, but at least annually.

(2) The manual shall contain but not be limited to policies and procedures for:

- (a) notifying staff of all changes in policies and procedures;
- (b) addressing patient rights, including a procedure for informing patients of their rights;

- (c) informing patients of the policy and procedures for patient complaints and grievances;

- (d) addressing and reviewing ethical issues faced by staff and reporting allegations of ethics violations to the applicable professional licensing authority;

- (e) admitting criteria and process to initiate behavioral treatment services to patients;

- (f) developing procedures for the transfer of a patient to another hospital or facility;

- (g) establishing fiscal policies governing the management of organizational and individual funds;

- (h) developing and implementing policy(s) for security;

- (i) establishing and maintaining a facility staffing procedure;

- (j) assessment criteria for new admissions;

- (k) informing patients of policies pertaining to secured treatment, suspension of treatment, transfer to other facilities, or discontinuation of services for voluntary patients;

- (l) suspending or discontinuing facility services with the following information to be provided to the patient:

- (i) the reason for suspending or discontinuing services or access to programs;

- (ii) the conditions that must be met to resume services or access to programs;

- (iii) the grievance procedure that may be used to appeal the suspension or discontinuation; and

(iv) what services, if any, will be continued to be provided even though participation in a particular service or program may be suspended or discontinued.

(m) referring patients to other providers or services that the facility does not provide; and

(n) conducting quality assessment and improvement activities.

(3) The policy and procedure manual must include a current organizational chart delineating the current lines of authority, responsibility, and accountability for the administration and provision of all facility patient treatment programs and services.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE XI DIRECT CARE AND OTHER EMPLOYEES (1) Employees shall receive orientation and training in areas relevant to the employee's duties and responsibilities including:

(a) an overview of the facility's policies and procedure manual in areas relevant to the employee's job responsibilities;

(b) a review of the employee's job description;

(c) services provided by the facility;

(d) rights of persons served; and

(e) safety and emergency response procedures.

(2) In addition to meeting the requirements of (4), direct care staff shall be trained to perform the services established in each patient treatment plan.

(3) All direct care staff must receive full orientation before providing direct patient care or treatment.

(4) The following must be met in staffing the facility:

(a) direct care staff shall have knowledge of the patient's needs and any events about which the employee should notify the administrator or the administrator's designated representative;

(b) the facility shall have a sufficient number of qualified staff on duty 24 hours a day to meet the scheduled and unscheduled needs of each patient, to respond in emergency situations, and to provide active treatment and provision of all related services including but not limited to:

(i) maintenance of order, safety, and cleanliness;

(ii) assistance with medication regimens;

(iii) preparation and service of meals;

(iv) housekeeping services and assistance with laundry; and

(v) assurance that each patient receives the supervision and care required by the treatment plan to meet the patient's basic needs.

(c) an individual on each work shift shall have keys to all relevant patient care areas and access to all items needed to provide appropriate patient treatment and care.

(5) The facility will employ registered nurses. The facility must be staffed by a registered nurse 24 hours a day, seven days per week. The RN may also serve as a supervisor.

AUTH: 53-21-194, MCA  
IMP: 53-21-161, 53-21-194, MCA

**RULE XII CLINICAL RECORDS** (1) A patient clinical record shall be created upon the patient's admission to the BHIF. The clinical records must comply with the requirements of 53-21-165 and 53-21-166, MCA. Clinical records must be retained for five years following the date of discharge or death. However, facilities that participate in Medicaid or Medicare programs must keep the clinical records for the applicable minimum retention period.

AUTH: 53-21-194, MCA  
IMP: 53-21-165, 53-21-166, 53-21-194, MCA

**RULE XIII PERSONNEL RECORDS** (1) The facility is responsible for establishing, maintaining, and securing a file on each employee, substitute personnel, intern, volunteer, and contractor.

(2) The following documentation from personnel files must be made available to the department at all reasonable times, but shall be made available to the department within 24 hours after the department requests to review the files.

- (a) the employee's name;
- (b) a copy of current credentials, certifications, or professional licenses as required to perform the job description;
- (c) an initialed copy of the employee's job description; and
- (d) initialed documentation of employee orientation and ongoing training.

(3) The facility shall keep a personnel file that meets the requirements set forth in (2) for the administrator of the facility, even when the administrator is also the facility owner.

AUTH: 53-21-106, 53-21-194, MCA  
IMP: 53-21-106, 53-21-194, MCA

**RULE XIV PATIENT ASSESSMENTS** (1) The facility shall utilize a multidisciplinary team which may include but is not limited to the patient, social workers, addiction counselors, licensed mental health professionals, licensed practical nurses, mental health technicians, peer support staff, registered nurses, psychologists, case managers, certified mental health professional persons, clergy, and family members.

(2) Each facility shall initiate a clinical intake assessment within 12 hours after admission for program services. Intake assessments must be conducted by a licensed mental health professional or licensed health care professional trained in clinical assessments and must include the following information in a narrative form to substantiate the patient's diagnosis and provide sufficient detail to individualize treatment plan goals and objectives:

- (a) presenting problem and history of problem;
- (b) mental status;
- (c) diagnostic impressions;
- (d) initial treatment plan goals;

- (e) risk factors to include suicidal or homicidal ideation;
  - (f) psychiatric history;
  - (g) substance use/abuse and history;
  - (h) current medication and medical history;
  - (i) financial resources;
  - (j) family relationships;
  - (k) housing history and housing arrangements;
  - (l) nutritional needs;
  - (m) cultural and spiritual needs;
  - (n) education and/or work history;
  - (o) legal history relevant to history of illness, including guardianships, civil commitments, criminal mental health commitments, current and prior criminal background, and current legal status; and
  - (p) anticipated discharge needs.
- (3) Based on the patient's clinical needs, the facility shall conduct additional assessments which may include, but are not limited to, physical, psychological, emotional, behavioral, psychosocial, recreational, vocational, psychiatric, and chemical dependency evaluations.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

**RULE XV INDIVIDUALIZED TREATMENT PLANNING** (1) Based upon the findings of the assessment(s), the facility shall initiate an individualized treatment plan for each patient within 24 hours of admission. The treatment plan must conform to requirements outlined in 53-21-162, MCA, be completed within ten days of admission, and:

- (a) identify treatment team members, from within and outside of the facility, who are involved in the patient's treatment or care;
- (b) specifically state measurable treatment plan objectives that serve the patient in the least restrictive and most culturally appropriate therapeutic environment;
- (c) describe the service or intervention with sufficient specificity to demonstrate the relationship between the service or intervention and the stated objective;
- (d) identify the staff person and program responsible for each treatment service to be provided;
- (e) include the patient's guardian or power of attorney's signature indicating participation in the development of the treatment plan. If the patient's or guardian's participation is not possible or inappropriate, written documentation must indicate the reason;
- (f) include the signature and date of the facility's licensed mental health professional and of the person(s) with primary responsibility for implementation of the treatment plan indicating development and ongoing review of the plan; and
- (g) state the criteria for discharge, including the patient's level of functioning which will indicate when a particular service is no longer required.



(2) The treatment plan must be reviewed at least every 30 days for each patient and whenever there is a significant change in the patient's condition. A change in level of care or referrals for additional services must be included in the treatment plan.

(3) The treatment plan review must be conducted by at least one licensed mental health professional from the facility and include persons with primary responsibility for implementation of the plan. Other staff members must be involved in the review process as clinically indicated.

(4) A treatment team meeting for establishing an individual treatment plan and for treatment plan review must be conducted face-to-face and include:

- (a) the patient as clinically appropriate;
- (b) the patient's guardian or the holder of the patient's power of attorney if applicable;
- (c) case manager, if the patient has one; and
- (d) peer support, or adult friend or family member may be invited to participate in the treatment planning or treatment plan review meeting, at the request of and upon written consent of the patient, and as deemed clinically appropriate by the patient's treatment team, prior to the scheduling of the meeting.

(5) The treatment plan review must be comprehensive with regard to the patient's response to treatment and result in either an amended treatment plan or a statement of the continued appropriateness of the existing plan. The results of the treatment plan review must be entered into the patient's clinical record. The documentation must include a description of the patient's functioning and justification for each patient goal.

(6) If the facility develops separate treatment plans for each service, the treatment plans must be integrated with one another and a copy of each treatment plan must be kept in the patient's record.

(7) Minimum components of treatment plans include:

- (a) assessment, medication administration and management;
- (b) discharge planning;
- (c) assistance with activities of daily living;
- (d) patient education;
- (e) individual, group, and family therapies; and
- (f) physical activity.

(8) Patient need and the patient's treating psychiatrist or mental health professional determine the length of stay.

(a) The maximum length of stay for a patient who is involuntarily committed is limited to the period authorized by the court order of commitment. Extension of commitment to a BHIF pursuant to 53-21-128, MCA, is not permitted.

AUTH: 53-21-194, MCA

IMP: 53-21-128, 53-21-162, 53-21-194, MCA

**RULE XVI RESTRAINT AND SECLUSION** (1) The facility must be capable of providing restraint or seclusion and must ensure that the restraint or seclusion is performed in compliance with 53-21-146, MCA.

(2) Restraint and seclusion must be performed in a manner that is safe, proportionate and appropriate to the severity of the behavior, the patient's size, gender, physical, medical, and psychiatric condition, and personal history.

(3) Restraint or seclusion may be used in emergency situations when needed to ensure the physical safety of the individual patient or other patients or staff of the facility and when less restrictive measures have been found to be ineffective to protect the resident or others from harm.

(4) Restraint and seclusion procedures must be implemented in the least restrictive manner possible in accordance with a written modification to the patient's health care/treatment plan and discontinued when the behaviors that necessitated the restraint or seclusion are no longer in evidence.

(5) "Whenever needed" or "as needed" PRN standing orders for use of restraint or seclusion are prohibited.

(6) A physician or other authorized health care provider must authorize use of the restraint or seclusion within one hour of initiating the restraint or seclusion.

(7) Each order of restraint or seclusion is limited in length of time to four hours.

(8) A facility will have at a minimum one "comfort/safe" room per 16 beds for use for patient seclusion as prescribed by the facility's policy and procedures, and in accordance with applicable state and federal standards.

AUTH: 53-21-194, MCA

IMP: 53-21-146, 53-21-194, MCA

RULE XVII DISCHARGE (1) The patient must be provided with an aftercare plan upon discharge.

(2) Each facility shall prepare a discharge plan for each patient no longer receiving services. The discharge plan must include:

(a) the reason for discharge;

(b) a summary of the services provided by the facility including recommendations for aftercare services and referrals to other services, if applicable;

(c) an evaluation of the client's progress as measured by the treatment plan and the impact of the services provided by the facility;

(d) diagnosis and response to medications; and

(e) the signature of the staff member who prepared the report and the date of preparation.

(3) The discharge summary must be filed in the clinical record within 72 hours after patient is discharged from the BHIF.

AUTH: 53-21-194, MCA

IMP: 53-21-180, 53-21-194, MCA

RULE XVIII TRANSFER/DISCHARGE TO ANOTHER FACILITY (1) A patient may be discharged and transferred to another facility pursuant to 53-21-111, MCA, at any time. The facility will contact the receiving facility to determine if a bed is available and to provide information about the individual being transferred.

(2) A patient who has been involuntarily committed to a BHIF pursuant to 53-21-127, MCA, may be transferred to another facility if the court which committed the patient to the BHIF has issued an order to transfer or an order committing the patient to the other facility.

(3) A patient for whom a petition for extension of commitment has been filed pursuant to 53-21-128, MCA, may be transferred to another facility if the court in which the petition is filed has issued an order to transfer or an order committing the patient to the other facility.

(4) If an emergency situation exists, the patient may be involuntarily transferred for admission to Montana State Hospital without a court order in accordance with 53-21-129, MCA, until the next business day.

(5) The patient's medical information and commitment order must accompany the patient.

AUTH: 53-21-194, MCA

IMP: 53-21-111, 53-21-128, 53-21-129, 53-21-194, MCA

RULE XIX PATIENT RIGHTS (1) Patients admitted to a behavioral health inpatient facility shall be afforded all of the rights of a patient provided for in Title 53, chapter 21, part 1, MCA, Treatment of the Seriously Mentally Ill.

(2) A copy of these rights shall be posted in a conspicuous place within the facility.

(3) These rights will also be explained to the patient in terms that the patient can understand.

AUTH: 53-21-101, 53-21-194, MCA

IMP: 53-21-101, 53-21-168, 53-21-194, MCA

RULE XX SECURITY (1) The facility shall develop security policies which address the following:

(a) securing the treatment unit;

(b) development of an emergency, fire, disaster, evacuation, and response plan; and

(c) summoning outside assistance from local emergency responders in the event of an emergency.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE XXI PHYSICAL PLANT (1) The building shall be considered an I - 2 occupancy for purpose of issuing a building permit.

(2) The building shall be classified as a New Health Care Occupancy or Existing Health Care Occupancy as found in Chapter 18 or Chapter 19 of the 2001, NFPA 101 - Life Safety Code. Copies of the codes may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, phone 1-617-770-3000.

AUTH: 53-21-194, MCA  
IMP: 53-21-194, MCA

RULE XXII COMMON USE AREAS (1) At least two separate social spaces, one appropriate for noisy activities and one for quiet activities, shall be provided. The combined area shall be at least 25 square feet for each of the two spaces. This space may be shared by dining activities if an additional 15 square feet per patient is added; otherwise, provide 20 square feet for patient dining. Dining facilities may be located off the nursing unit in a central area.

AUTH: 53-21-194, MCA  
IMP: 53-21-194, MCA

RULE XXIII PATIENT TOILETS AND BATHING (1) There must be at least one toilet available for every four patients in the facility.  
(2) There must be at least one bathing unit for every six patients in the facility. A shower or tub is not required if the facility utilizes a central bathing unit for every six patients.  
(3) All doors to toilet rooms or bathing unit must swing out or slide into the wall and shall be able to be unlocked from the outside. Toilet rooms and bathing facilities may be under key control by staff.

AUTH: 53-21-194, MCA  
IMP: 53-21-194, MCA

RULE XXIV INFECTION CONTROL (1) The facility must establish and maintain infection control policies and procedures sufficient to provide a safe environment and to prevent the transmission of disease. Such policies and procedures must, at a minimum, include the following:  
(a) any employee contracting a communicable disease that is transmittable to residents through food handling or direct care must not appear at work until the infectious disease(s) can no longer be transmitted;  
(b) diagnosis and treatment of communicable or infectious disease occurrence and that appropriate safety measures are taken on behalf of that patient, of other patients, staff, and visitors; and  
(c) all staff shall use proper hand washing techniques before and after providing direct care to a patient.  
(2) The facility shall comply with statutes and rules regarding the handling and disposal of biohazardous waste.

AUTH: 53-21-194, MCA  
IMP: 53-21-194, MCA

RULE XXV FOOD SERVICE (1) Facilities shall comply with the regulations concerning food service establishments which are located at ARM Title 37, chapter 110, subchapter 2.

(2) Facilities shall provide for the patient's nutritional needs as prescribed by the patient's doctor.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE XXVI LAUNDRY AND HOUSEKEEPING (1) Laundry and housekeeping services must be provided by the facility. A contracted service provider or the facility directly may provide laundry and housekeeping services.

(2) Facility administrators will ensure that provisions are made to accommodate patient laundry and housekeeping to assure a safe and clean environment.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

RULE XXVII QUALITY ASSESSMENT (1) Each facility shall implement and maintain an active quality assessment program using information collected to make improvements in the facility's policies, procedures, and services. At a minimum, the program must include procedures for:

(a) conducting patient satisfaction surveys, at least annually, for all facility programs. The survey must address:

(i) whether the patient, parent, or guardian is adequately involved in the development and review of the patient's treatment plan;

(ii) whether the patient, parent, or guardian was informed of patient's rights and the facility's grievance procedure;

(iii) the patient's, parent's, or guardian's satisfaction with all facility programs in which the patient participated; and

(iv) the patient's, parent's, or guardian's recommendations for improving facility's services.

(b) maintaining records on the occurrence, duration, and frequency of seclusion and physical restraints used; and

(c) reviewing, on an ongoing basis, incident reports, grievances, complaints, medication errors, and the use of seclusion and/or physical restraint with special attention given to identifying patterns and making necessary changes in how services are provided.

(2) Each facility shall prepare and maintain on file an annual report of improvements made resulting from the quality assessment program.

AUTH: 53-21-194, MCA

IMP: 53-21-194, MCA

4. The department is proposing the adoption of new Rules I through XXVII to promulgate the minimum licensing standards for behavioral health inpatient facilities (BHIF). Section 53-21-194, MCA enables the department to license behavioral health inpatient facilities to provide inpatient psychiatric care to persons involuntarily committed or detained under Title 53, MCA or to persons seeking treatment

voluntarily. Section 53-21-194, MCA also requires the department to adopt rules governing the qualifications for licensure of BHIFs. These proposed licensure rules provide the minimum licensing standards for BHIFs specifically while coordinating with the provisions of Title 50, chapter 5, parts 1 and 2, MCA, and applicable rules from ARM Title 37, chapter 106 regarding hospitals and related health facilities.

In addition to being required by statute, the rules are necessary to inform potential providers and recipients of behavioral health inpatient facility services of the expectations necessary in order to be licensed and address for patients various aspects of their treatment program and setting in which treatment will be received. Providing the mechanism for BHIFs to become licensed by the state can provide communities with the opportunity to develop more local mental health treatment options.

The proposed rules address basic BHIF requirements for the application process, staffing requirements, policies and procedures, records, security, physical setting, and environmental considerations.

The rules also address specific requirements more directly relating to the patient including assessments, treatment planning, restraint and seclusion, patient rights, quality assessment, discharge, and transfer to the state hospital.

The department considered several options regarding promulgating rules relating to behavioral health inpatient facilities. First, was it necessary to have rules specific to behavioral health inpatient facilities? The department determined the rules were necessary due to increased demand for mental health treatment services currently provided in hospital emergency rooms. Individuals who will be served in a behavioral health inpatient facility are now seen in a hospital emergency room at considerable public expense. For those who do require an inpatient level of care a BHIF provides a less expensive alternative for assessment of clinical needs because there is no transportation to and from the state hospital. A BHIF can also make referrals or utilize any appropriate available resources in the community.

Incorporating BHIF requirements into specialty mental health facility rules was also considered by the department but was rejected. While both BHIFs and specialty mental health facilities treat individuals with mental impairments, the treatment needs are too diverse to consolidate both types of facilities into one set of rules. Rules specific to each type of mental health facility will ensure that the rules are neither too restrictive nor permissive in providing appropriate regulation of the facility for the types of clients served.

5. The department intends to apply these rules effective July 1, 2009. In the event the rules are adopted retroactively no negative impact is anticipated.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., June 25, 2009.

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, apply and have been fulfilled. The primary bill sponsor was contacted by letter dated May 11, 2009, sent postage prepaid via USPS.

/s/ Lisa Swanson  
Rule Reviewer

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

Certified to the Secretary of State May 18, 2009.

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 37.111.230 pertaining to trailer ) PROPOSED AMENDMENT  
courts and tourist campgrounds )

TO: All Concerned Persons

1. On June 17, 2009, 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 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 June 8, 2009, 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:

37.111.230 SERVICE BUILDINGS AND OTHER SERVICE FACILITIES FOR GENERAL SERVICES CAMPGROUNDS (1) A central service building must be provided for each general services campground that has spaces designated for use by ~~trailers~~ dependent recreational vehicles or tents. The central service building must be approved by the building authority and must contain toilets and other plumbing fixtures, as follows:

(a) and (b) remain the same.

(c) The service building must be conveniently located within a radius of 300 feet from all ~~trailer spaces or campsites~~ dependent recreational vehicle or tent sites to be served.

(d) through (2)(c)(ii) remain the same.

AUTH: 50-52-102, MCA

IMP: 50-52-102, MCA

4. The Department of Public Health and Human Services (department) proposes to amend in ARM 37.111.230(1) that the term "trailers" be replaced with "dependent recreational vehicles". In ARM 37.111.230(1)(c) the department



proposes that the terms "trailer spaces or campsites" be replaced with "dependent recreational vehicles or tent sites".

The current rule requires general services campgrounds to provide service buildings with showers, toilets, and hand washing sinks within 300 feet of every campsite, even if individual hookups to water and sewer are provided at the site. The change would eliminate the need for general services campground to provide a general service building for independent recreational vehicle sites. By definition, an independent recreational vehicle has a toilet, sink, bathing facilities, and a waste holding tank. As amended, the rule still requires general services to be provided within a reasonable distance to campers without showers, toilets, or hand washing sinks at the campsite.

The existing rule requires a duplication of services to campers who travel in a self-contained independent recreational vehicle. When a recreational vehicle has a toilet, sink, and bathing facilities, it is an unreasonable cost to the campground owner to have to provide these services within 300 feet. The proposed changes offer means for accessibility to toilets, hand washing sinks, and bathing facilities, without unnecessary cost and maintenance to the campground owner.

The department considered leaving the rule as currently written, but this adds an additional cost and decrease in aesthetic value to campgrounds under development or renovation. Many campers in self-contained recreational vehicles generally prefer to stay overnight at a site as far away as possible from public restrooms and showers. As is, the campground owner is required to provide redundant services.

The department considered removing the requirement to provide showers, toilets, and hand washing sinks for general services campgrounds. When these basic services are not available within a comfortable walking distance, campers are prone to discharging waste on the ground, creating a nuisance and risk to public health. Provisions for basic sanitation are necessary for public health protection.

The authority for the department to adopt rules for constructing and operating campgrounds, trailer courts, work camps, and youth camps to protect the public health and safety is in 50-52-102, MCA.

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](mailto:dphhslegal@mt.gov), and must be received no later than 5:00 p.m., June 25, 2009.

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/ Shannon McDonald  
Rule Reviewer

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

Certified to the Secretary of State May 18, 2009.

BEFORE THE DEPARTMENT OF COMMERCE  
OF THE STATE OF MONTANA

In the matter of the amendment of        ) NOTICE OF AMENDMENT  
ARM 8.119.101 pertaining to the        )  
Tourism Advisory Council                )

TO: All Concerned Persons

1. On April 16, 2009, the Department of Commerce published MAR Notice No. 8-119-73 pertaining to the proposed amendment of the above-stated rule at page 398 of the 2009 Montana Administrative Register, Issue Number 7.

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

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 May 18, 2009.

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

In the matter of the amendment of ) NOTICE OF DECISION ON  
ARM 12.11.2204 pertaining to a no ) PROPOSED AMENDMENT  
wake zone on Echo Lake )

To: All Concerned Persons

1. On January 29, 2009 the Fish, Wildlife and Parks Commission (commission) published MAR Notice No. 12-350 pertaining to the proposed amendment of the above-stated rule at page 53 of the 2009 Montana Administrative Register, Issue Number 2.

2. A public hearing on the notice of proposed amendment of the above-stated rule was held on February 19, 2009.

3. The commission has not adopted the amendment of the above-stated rule.

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

Comment 1: The commission received several comments stating that starting and dropping a water-skier in order to slow down to a no wake speed is unsafe.

Response 1: The commission has not adopted the proposed rule amendment due to safety concerns. All rules and regulations to ensure the safety of water-skiers are still in effect and will be enforced. Concerns for the safety of a water-skier being dropped in the open water outside of the corridor can be further addressed by the boat pulling the skier into shore at the entrance of the corridor, motoring at a no wake speed through the corridor to the shoreline on the other end, and pulling the skier from shore into the open water.

Comment 2: One person commented that a bigger wake is created when slowing down from a plane speed causing more damage to shore lines and docks.

Response 2: The commission recognizes that a bigger wake is created when slowing down from a plane speed. The wake made by a motorized vessel slowing down to a no wake speed prior to entering a corridor is dispersed through a larger body of water reducing the disturbance to the shore. Driving at a wake speed through the channel results in a wake hitting the shoreline throughout the entire channel.

Comment 3: One person stated they believed the commission adopted the 200 foot no wake zone for larger lakes like Flathead Lake and not for smaller lakes such as Echo Lake.

Response 3: In October of 2000, the commission adopted ARM 12.11.115 for all lakes greater than 35 acres in the Western Fishing District. For lakes 35 acres or less, ARM 12.11.110 requires a controlled no wake speed for the entire lake.

Comment 4: Several people stated that adoption of the proposed rules would result in a consistent exemption on the four main bays of Echo Lake and if the proposed rules are not adopted, boaters new to Echo Lake will not know where the exemptions and no wake zones exist.

Response 4: The commission recognizes that adoption of the proposed rules would result in a consistent exemption with other previously adopted exemptions. However, the restrictions are posted on a map at the fishing access site and in the annual boating regulations. It is the responsibility of the operator of a motorized vessel to know and understand all laws pertaining to the location of the recreational activity and are encouraged to contact the local game warden or Fish, Wildlife and Parks office with any questions or concerns.

Comment 5: Several people stated that the proposed rules would allow for travel from the bays to the main body of the lake decreasing congestion and increasing safety.

Response 5: It is with safety in mind that this decision has been made. Many of the activities that take place near shore include swimming, fishing from shore or docks, and operation of manually powered vessels. The commission has decided not to repeal the 200 foot no wake zone in the corridors to protect the safety of individuals engaging in these activities.

Comment 6: One person stated that the commission's decision should not consider the safety of swimmers near the corridor when making a final decision because children and adults should not be allowed to swim in the entrance of the bay.

Response 6: Montana's water bodies are open to many forms of recreational activities including swimming. Montana does not have a law prohibiting swimming in the narrow channel but does have laws regarding negligent operation of a motorized vessel in a manner which may endanger the personal health of any person.

Comment 7: One person stated that since the repeal of the no wake zone in the corridor to Causeway Bay in 2008, more conflict between fisherman and motorized vessel operators has increased.

Response 7: The commission is unaware of an increased number of complaints in that area. The Fish, Wildlife and Parks enforcement personnel is available to address any complaints.

Comment 8: One person commented that the wave action has increased since the repeal of the no wake zone in the corridor to Causeway Bay in 2008 and people are unable to sit on or swim around the docks due to increased safety risks.

Response 8: The local Fish, Wildlife and Parks personnel have reported that wave action has increased since the repeal of the no wake zone in that area. The commission considered this safety concern when making its decision.

Comment 9: Several people stated the proposed changes will increase hazardous conditions between slow moving watercraft and motorized watercraft.

Response 9: The commission considered this safety concern when making its decision.

Comment 10: Several people stated that dropping and picking up skiers in the middle of the lake should not be a determining factor to this decision because skiers fall off rope in the middle lake and need to be picked up no matter where the skier starts or finishes.

Response 10: The commission considered all public comment before making this decision. Please see Response 1.

Comment 11: One person stated that erosion already exists because of exposed shoreline and the proposed rules will increase the erosion and recommended the commission consider the recommendations of Fish, Wildlife and Parks staff and county and state environmental officials about the environmental repercussions of the proposed rules.

Response 11: The commission considered all public comment and recommendations of staff and county environmental officials before making its decision.

Comment 12: Several people stated that the commission should not continue to make exceptions to the no wake zone because the public lake will become a privately regulated lake without a no wake zone.

Response 12: ARM 12.11.117 outlines the public's right to petition the commission for exemptions to the no wake zone. The commission published proposed rules in order to gather public comment and the commission considered all public comment before making its decision.

Comment 13: Two people stated that not all users of Echo Lake live there and are unaware of the fluctuating water levels and the safety risks involved with the lake.

Response 13: The commission considered the fluctuating water levels on Echo Lake and the safety risks involved when making its decision.

Comment 14: One person stated that the commission should not evaluate the proposed rules by whether or not there have been any injuries or deaths on the land and the commission should not wait until there is an injury or death.

Response 14: The commission recognizes that there has been no reported accidents on Echo Lake attributable to speed in the narrow channels. The commission did evaluate all public comments and safety concerns before making its decision.

/s/ Shane Colton

Shane Colton, Chairman  
Fish, Wildlife and Parks Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter  
Rule Reviewer

Certified to the Secretary of State May 18, 2009.

BEFORE THE DEPARTMENT OF JUSTICE  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 23.12.1201 through 23.12.1207, )  
concerning attendance at MLEA, and )  
ARM 23.12.1412 and 23.12.1414, )  
concerning performance criteria at )  
MLEA )

TO: All Concerned Persons

1. On April 16, 2009, the Department of Justice published MAR Notice No. 23-12-209, pertaining to the proposed amendment of the above-stated rules at page 401 of the 2009 Montana Administrative Register, Issue Number 7.
2. The department has amended the above-stated rules as proposed.
3. No comments or testimony were received.

By: /s/ Steve Bullock  
STEVE BULLOCK  
Attorney General  
Department of Justice

/s/ J. Stuart Segrest  
J. STUART SEGREST  
Rule Reviewer

Certified to the Secretary of State on May 18, 2009.



BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of	)	CORRECTED NOTICE
ARM 24.17.127 related to prevailing	)	OF AMENDMENT
wage rates for public works projects -	)	
building construction services, heavy	)	
construction services, highway	)	
construction services, and	)	
nonconstruction services	)	

TO: All Concerned Persons

1. On February 26, 2009, the Department of Labor and Industry published MAR Notice No. 24-17-236 regarding the public hearing on the proposed amendment of ARM 24.17.127, pertaining to prevailing wage rates for public works projects for building construction services and heavy and highway construction services on page 249 of the 2009 Montana Administrative Register, issue no. 4. On May 14, 2009, the Department of Labor and Industry published the notice of amendment on page 736 of the 2009 Montana Administrative Register, issue no. 9.

2. The department has discovered an error in the travel pay information for the occupation of Elevator Repairers. The error arises both in the construction services publication and in the nonconstruction services publication, which are incorporated by reference in ARM 24.17.127. The error pertains to an omission of the rate for travel over 35 miles, and in the statement of the calculation of the travel rates for travel of 11 miles to 25 miles, and for travel of 26 miles to 35 miles. In addition, the narrative description of the additional pay amount for the 11-25 mile zone and the 26-35 mile zone has been changed into a dollar amount to make it easier to understand and increase the likelihood of being paid correctly. The corrected information reads as follows, deleted matter interlined, new matter underlined:

construction services publication:

Elevator Repairers

Travel: (All Districts)

0-15 mi. free zone

16-25 mi. ~~1/2 hour at the prevailing wage rate + Federal mileage rate/mi.~~ \$33.55

26-35 mi. ~~1 hour at the prevailing wage rate + Federal mileage rate/mi.~~ \$67.11

35+ mi. actual travel time (at the prevailing wage rate) + \$ 0.63/mi.

Per Diem: (All Districts)

\$72.55/day

nonconstruction services publication:

Elevator Repairers

Travel: (All Districts)

0-15 mi. free zone

16-25 mi. \$33.55

26-35 mi. \$67.11

35+ mi. actual travel time (at the prevailing wage rate) + \$ 0.63/mi.

Per Diem: (All Districts)

\$72.55/day

3. The corrected material has been incorporated into the 2009 version of "The State of Montana Prevailing Wage Rates - Building Construction Services" publication, including the on-line version of the publication.

4. The corrected material has been incorporated into the 2009 version of "The State of Montana Prevailing Wage Rates - Nonconstruction Services" publication, including the on-line version of the publication.

/s/ MARK CADWALLADER

Mark Cadwallader

Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner

DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 18, 2009

BEFORE THE BOARD OF PRIVATE ALTERNATIVE ADOLESCENT  
RESIDENTIAL OR OUTDOOR PROGRAMS  
DEPARTMENT OF LABOR AND INDUSTRY  
STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF AMENDMENT  
ARM 24.181.401 registration fee )  
schedule, 24.181.402 licensing fee )  
schedule, and 24.181.2101 renewals, )  
pertaining to private alternative )  
adolescent residential and outdoor )  
programs )

TO: All Concerned Persons

1. On March 26, 2009, the Board of Private Alternative Adolescent Residential or Outdoor Programs (board) published MAR Notice No. 24-181-4 regarding the public hearing on the proposed amendment of the above-stated rules, at page 339 of the 2009 Montana Administrative Register, issue no. 6.
2. On April 16, 2009, a public hearing was held on the proposed amendment of the above-stated rules in Helena. No comments or testimony were received.
3. The board has amended ARM 24.181.401, 24.181.402, and 24.181.2101 exactly as proposed.

BOARD OF PRIVATE ALTERNATIVE  
ADOLESCENT RESIDENTIAL OR  
OUTDOOR PROGRAMS  
JOHN SANTA, CHAIRPERSON

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

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

Certified to the Secretary of State May 18, 2009

## **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 March 31, 2009. This table includes those rules adopted during the period April 1, 2009, through June 30, 2009, 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 March 31, 2009, 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 2008 and 2009 Montana Administrative Register.

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

### GENERAL PROVISIONS, Title 1

1.3.201            and other rule - Definitions - MAPA, p. 2418, 7

### ADMINISTRATION, Department of, Title 2

I                    Waiver of In-State Office Requirement, p. 2320, 2621  
2.5.502            and other rule - Contract Security, p. 2310, 2616  
2.59.401           Credit Union Supervisory and Examination Fees, p. 2323, 2620  
2.59.1711          Continuing Education, p. 159, 735

#### (Public Employees' Retirement Board)

2.43.203           and other rules - Operation of the Retirement Systems and Plans Administered by the Montana Public Employees' Retirement Board, p. 1852, 2467, 78  
2.43.1001          Adoption by Reference of the State of Montana Public Employee Defined Contribution Plan Document, January 1, 2008, Edition, p. 2396, 82  
2.43.1801          Adoption by Reference of the State of Montana Public Employee Deferred Compensation Plan Document, January 1, 2008, Edition, p. 2393, 81  
2.43.3502          and other rule - (Public Employees' Retirement Board) Investment Policy Statement for the Defined Contribution Retirement Plan -

Investment Policy Statement for the 457 Deferred Compensation Plan,  
p. 394

(Teachers' Retirement Board)

2.44.301A and other rules - Administration of the Teachers' Retirement System of  
the State of Montana, p. 2313, 2619, 3

(State Compensation Insurance Fund)

2.55.320 and other rule - Classifications of Employments - Construction Industry  
Premium Credit Program, p. 2399, 140

#### AGRICULTURE, Department of, Title 4

4.9.401 Raising the Wheat and Barley Assessment, p. 2574, 264

4.10.401 Farm Applicator Licensing Schedule, p. 2198, 2557

4.12.1320 and other rules - Quarantines - Pest Management Standards, p. 118,  
343

#### STATE AUDITOR, Title 6

6.6.504 and other rules - Medicare Supplements, p. 506

6.6.2101 and other rules - Discrimination, p. 2403, 83

6.6.3504 and other rules - Annual Audited Reports - Establishing Accounting  
Practices and Procedures to be Used in Annual Statements - Actuarial  
Opinion - Annual Audit - Required Opinions - Statement of Actuarial  
Opinion Not Including an Asset Adequacy Analysis - Additional  
Considerations for Analysis, p. 2201, 2622

#### COMMERCE, Department of, Title 8

I Administration of the 2009-2010 Federal Community Development  
Block Grant (CDBG) Program, p. 2408, 410

8.99.901 and other rules - Award of Grants and Loans Under the Big Sky  
Economic Development Program, p. 2411, 141

8.119.101 Tourism Advisory Council, p. 398

(Montana Coal Board)

8.101.201 and other rules - Policies of the Montana Coal Board - Applications for  
Montana Coal Board Grant Assistance, p. 2220, 344

#### EDUCATION, Department of, Title 10

(Board of Public Education)

10.57.102 and other rules - Educator Licensure, p. 30, 345



FISH, WILDLIFE AND PARKS, Department of, Title 12

(Fish, Wildlife and Parks Commission)

12.11.2204 No Wake Zone on Echo Lake, p. 53

ENVIRONMENTAL QUALITY, Department of, Title 17

17.50.403 and other rules - Solid Waste - Licensing and Operation of Solid Waste Landfill Facilities, p. 164

17.56.502 Underground Storage Tanks - Reporting of Suspected Releases, p. 2232, 2416, 4

(Board of Environmental Review)

17.4.101 and the Department - Model Rules, p. 129

17.8.102 Air Quality - Incorporation by Reference, p. 1, 411

17.8.308 and other rules - Air Quality - Particulate Matter - Permit Application Fees - General Exclusions for Air Quality Permits - Requirements for Timely and Complete Air Quality Operating Permit Applications, p. 2224, 142

17.30.617 and other rule - Water Quality - Outstanding Resource Water Designation for the Gallatin River, p. 2294, 328, 1398, 438, 1953, 162

17.38.101 and other rules - Public Water Supply - Incorporation by Reference of Current Federal Regulations and Other Materials in the Public Water Supply Rules - Consecutive System Coverage, p. 1731, 2625

17.40.318 and other rule - and the Department - Water Treatment Systems and Operators - Public Water and Sewage System Requirements - State Revolving Fund and Public Water and Sewer Projects Eligible for Categorical Exclusion From MEPA Review, p. 55, 412

JUSTICE, Department of, Title 23

1.3.201 and other rule - Definitions - MAPA, p. 2418, 7

23.12.1201 and other rules - Attendance at MLEA - Performance Criteria at MLEA, p. 401

(Gambling Control Division)

23.16.1802 and other rules - Audit Data Storage Devices - Definitions - Record Keeping Requirements, p. 2540, 84, 143

LABOR AND INDUSTRY, Department of, Title 24

Boards under the Business Standards Division are listed in alphabetical order following the department rules.

I Licensee Lookup Database, p. 61

- 24.17.127 Prevailing Wage Rates for Public Works Projects - Building Construction Services, Heavy Construction Services, Highway Construction Services, and Nonconstruction Services, p. 249, 736
- 24.29.1533 and other rule - Workers' Compensation Medical Fee Schedule for Nonfacilities, p. 2326, 8

(Human Rights Commission)

- 24.8.101 and other rules - Allegations of Unlawful Discrimination, p. 2091, 2636

(Alternative Health Care Board)

- 24.111.2102 and other rule - Continuing Education, p. 2577, 265

(Board of Architects and Landscape Architects)

- 24.114.101 and other rules - Board Organization - Procedural Rules - Definitions - Fees - Architect Seal - Architect Business Entity Practice - Emergency Use - Licensure By Examination - Unprofessional Conduct - Screening Panel - Architect Partnerships - Landscape Architect Licensure, p. 2545, 413

(State Electrical Board)

- 24.141.301 and other rules - Definitions - Fees - Applications - Temporary Practice Permits - Examinations - Continuing Education - Master Electrician Qualifications, p. 64

(Board of Medical Examiners)

- I Medical Direction, p. 2238, 416
- 24.156.2719 Expired License, p. 2235, 415

(Board of Nursing)

- 24.159.301 and other rules - Definitions - Foreign Educated Applicants for RN Licensure Requirements - APRNs, p. 875, 2346, 2641
- 24.159.1006 and other rules - Cosmetic Procedure Standards - Nonroutine Applications, p. 252

(Board of Outfitters)

- 24.171.401 and other rules - Fees - Qualifications, p. 256

(Board of Physical Therapy Examiners)

- 24.177.405 and other rules - Physical Therapy Aides - Temporary Licenses - Out of State Applicants - Foreign Trained Applicants - Topical Medication Protocols - Continuing Education - Physical Therapists, p. 586

(Board of Private Alternative Adolescent Residential or Outdoor Programs)

- 24.181.301 and other rules - Definitions - Fees - Private Alternative Adolescent Residential and Outdoor Programs, p. 303

24.181.401 and other rules - Registration Fee Schedule - Licensing Fee Schedule  
- Renewals - Private Alternative Adolescent Residential and Outdoor  
Programs, p. 339

(Board of Public Accountants)

24.201.301 and other rules - Accounting, p. 1654, 9

(Board of Realty Regulation)

24.210.301 and other rules - Definitions - Licensure - Unprofessional Conduct -  
Supervising Broker Endorsement - Citations and Fines, p. 1679, 2558

24.210.641 Unprofessional Conduct, p. 2580, 748

(Board of Sanitarians)

24.216.402 and other rule - Fees - Sanitarian in Training, p. 75, 455

(Board of Social Work Examiners and Professional Counselors)

24.219.301 and other rules - Definitions - Fees - Application - Licensure - Status  
Conversion - Application - Continuing Education - Unprofessional  
Conduct - Social Work Examiners and Professional Counselors,  
p. 2583

#### LIVESTOCK, Department of, Title 32

32.23.301 Fees Charged by the Department on the Volume on All Classes of  
Milk, p. 2596, 144

#### NATURAL RESOURCES AND CONSERVATION, Department of, Title 36

36.10.132 and other rules - Firewarden Qualifications, Duties, and Legal  
Representation for State Firefighters, p. 2246, 2559

(Board of Land Commissioners)

I-XVIII (Board and Department) Selection, Implementation, and Reporting of  
Real Estate Projects on State Trust Lands, p. 1955, 2645

#### PUBLIC HEALTH AND HUMAN SERVICES, Department of, Title 37

I-VI Medical Marijuana Program, p. 2027, 322

I-IX Mental Health Center Services for Youth With Serious Emotional  
Disturbance (SED), p. 2603, 272

37.5.117 and other rules - Establishing Hearings for Disputes Related to the  
Medicaid Drug Rebate Program, p. 2338, 2669

37.5.117 and other rules - Swimming Pools, Spas, and Other Water Features,  
p. 604

37.8.1801 and other rules - Montana Central Tumor Registry, p. 2428, 87

37.10.101 and other rules - Living Wills, p. 1686, 2356, 86

- 37.30.405 Vocational Rehabilitation Program Payment for Services, p. 407
- 37.52.210 Adjustment of Subsidy Payment, p. 132, 417
- 37.75.101 and other rules - Child and Adult Care Food Program (CACFP),  
p. 2446, 88
- 37.78.102 and other rules - Temporary Assistance for Needy Families (TANF),  
p. 596
- 37.81.304 Pharmacy Access Prescription Drug Benefit Program (Big Sky Rx),  
p. 2330, 2670
- 37.85.212 and other rule, Resource Based Relative Value Scale (RBRVS)  
Medicaid Provider Rates and Mid-Level Practitioner's Reimbursement  
for Services to Medicaid Clients Under Age 21, p. 436
- 37.85.903 and other rule - General Medicaid Services - Physician-Administered  
Drugs, p. 2129, 2671
- 37.86.1001 and other rules, Medicaid Dental Service Providers' Reimbursement  
Rates, p. 444
- 37.86.1801 and other rules - Durable Medical Equipment (DME), p. 2334, 2672
- 37.86.2207 and other rules - Medicaid School-Based Health Services, p. 2251,  
2673
- 37.86.2207 and other rules - Medicaid and MHSP Reimbursement for Youth  
Mental Health Services, p. 1536, 2360, 2674
- 37.86.2405 and other rules - Medicaid Transportation Reimbursement for Mileage,  
p. 2599, 145
- 37.87.1223 Psychiatric Residential Treatment Facility (PRTF) Services -  
Reimbursement, p. 261, 418
- 37.88.101 and other rules - Targeted Case Management for Youth With Serious  
Emotional Disturbance, p. 2434, 266
- 37.106.2301 and other rule - Hospice Facilities, p. 2255, 351
- 37.108.507 Components of Quality Assessment Activities, p. 450

PUBLIC SERVICE REGULATION, Department of, Title 38

- 38.3.601 and other rules- Motor Carrier Certificates - Electronic Copy of Filings,  
p. 319
- 38.5.2102 and other rules - Electric Utility Voltage - Pipeline Safety, p. 2453, 90

REVENUE, Department of, Title 42

- I Temporary Emergency Lodging Credit, p. 2262, 12
- I & II Property Tax for Privately Owned Landfills, p. 2460, 751
- 42.4.201 and other rules - Individual Energy Conservation Installation Credit,  
p. 2456, 459
- 42.4.2501 Biodiesel and Biolubricant Tax Credit, p. 135, 419
- 42.13.601 Small Brewery Closing Time Restrictions, p. 2613
- 42.15.215 Senior Interest Income Exclusions, p. 137, 353
- 42.21.113 and other rules - Personal, Industrial, and Centrally Assessed Property  
Taxes, p. 2134, 2502, 2561

## 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 April 2009 appear. Vacancies scheduled to appear from June 1, 2009, through August 31, 2009, 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 May 1, 2009.

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 APRIL, 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Hail Insurance</b> (Agriculture)			
Ms. Trudy Laas Skari Chester	Governor	reappointed	4/18/2009 4/18/2012
Qualifications (if required): public member			
<b>Board of Hearing Aid Dispensers</b> (Labor and Industry)			
Mr. Brian Bolenbaugh Missoula	Governor	reappointed	4/1/2009 7/1/2012
Qualifications (if required): hearing aid dispenser (no masters)			
Ms. Lee Frantz Oines Missoula	Governor	reappointed	4/1/2009 7/1/2011
Qualifications (if required): dispenser with master's degree and national certification			
Mr. Jim Lieberg Helena	Governor	Winsor	4/1/2009 7/1/2011
Qualifications (if required): public representative with a hearing aid			
Mr. Mervin Michel Great Falls	Governor	Wilson	4/1/2009 7/1/2012
Qualifications (if required): hearing aid dispenser (no masters)			
<b>Board of Investments</b> (Commerce)			
Ms. Elouise Cobell Browning	Governor	reappointed	4/1/2009 1/1/2013
Qualifications (if required): representative of the agriculture representative			

## BOARD AND COUNCIL APPOINTEES FROM APRIL, 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Board of Investments</b> (Commerce) cont.			
Ms. Teresa Cohea	Governor	reappointed	4/1/2009
Helena			1/1/2013
Qualifications (if required): representative of the financial community			
Mr. James Turcotte	Governor	reappointed	4/1/2009
Helena			1/1/2013
Qualifications (if required): representative of the Teachers' Retirement Board			
<b>Board of Public Education</b> (High Education)			
Mr. John Edwards	Governor	Miller	4/9/2009
Billings			2/1/2016
Qualifications (if required): resident of District 2			
<b>Clinical Laboratory Science Practitioners</b> (Labor and Industry)			
Ms. Wendy Palmer	Governor	reappointed	4/16/2009
Raynesford			4/16/2012
Qualifications (if required): clinical laboratory science practitioner			
<b>County Printing Board</b> (Administration)			
Mr. Dan Killoy	Governor	reappointed	4/1/2009
Miles City			4/1/2011
Qualifications (if required): printing industry representative			
Commissioner Laura Obert	Governor	MacDonald	4/1/2009
Townsend			4/1/2011
Qualifications (if required): County Commissioner			

## BOARD AND COUNCIL APPOINTEES FROM APRIL, 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>County Printing Board</b> (Administration) cont.			
Mr. Calvin J. Oraw	Governor	reappointed	4/1/2009
Sidney			4/1/2011
Qualifications (if required):	public representative		
Commissioner Marianne Roose	Governor	reappointed	4/1/2009
Eureka			4/1/2011
Qualifications (if required):	County Commissioner		
Mr. Milton Wester	Governor	reappointed	4/1/2009
Laurel			4/1/2011
Qualifications (if required):	printing industry representative		
<b>Livestock Loss Reduction and Mitigation Board</b> (Livestock)			
Mr. James Cross	Governor	reappointed	4/1/2009
Kalispell			1/1/2013
Qualifications (if required):	nominee from the Fish, Wildlife and Parks Commission		
Mr. John Herman	Governor	MacDonald	4/1/2009
Hot Springs			1/1/2013
Qualifications (if required):	nominee from the Board of Livestock		
Mr. Michael Leahy	Governor	Holden	4/1/2009
Bozeman			1/1/2013
Qualifications (if required):	nominee from the Fish, Wildlife and Parks Commission		



## BOARD AND COUNCIL APPOINTEES FROM APRIL, 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>Livestock Loss Reduction and Mitigation Board</b> (Livestock) cont.			
Mr. Brad Radtke	Governor	reappointed	4/1/2009
Drummond			1/1/2013
Qualifications (if required): nominee from the Fish, Wildlife and Parks Commission			
Ms. Whitney Wankel	Governor	reappointed	4/1/2009
Bozeman			1/1/2013
Qualifications (if required): public member			
<b>Public Employees Retirement Board</b> (Administration)			
Mr. Patrick McKittrick	Governor	Bough	4/1/2009
Great Falls			4/1/2014
Qualifications (if required): having experience in investment management			
Mr. Terrence Smith	Governor	reappointed	4/1/2009
Bozeman			4/1/2014
Qualifications (if required): public employee in the defined contrubution plan			
<b>State Compensation Insurance Fund Board</b> (Administration)			
Rep. Jane DeBruycker	Governor	reappointed	4/28/2009
Dutton			4/28/2013
Qualifications (if required): policy holder			
Mr. Thomas R. Heisler	Governor	reappointed	4/28/2009
Great Falls			4/28/2013
Qualifications (if required): representative of private enterprise and a policy holder			

## BOARD AND COUNCIL APPOINTEES FROM APRIL, 2009

<u>Appointee</u>	<u>Appointed by</u>	<u>Succeeds</u>	<u>Appointment/End Date</u>
<b>State Compensation Insurance Fund Board</b> (Administration) cont.			
Mr. Ken Johnson	Governor	reappointed	4/28/2009
Missoula			4/28/2013
Qualifications (if required): representative of private enterprise and a policy holder			
Mr. James Swanson	Governor	reappointed	4/28/2009
Glendive			4/28/2013
Qualifications (if required): insurance producer and a policy holder			

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Aging Advisory Council</b> (Public Health and Human Services) Ms. Gladys Considine, Missoula Qualifications (if required): public representative	Governor	7/18/2009
Ms. Mary Mumby, Kalispell Qualifications (if required): public representative	Governor	7/18/2009
Ms. Mary Lou Miller, Wolf Point Qualifications (if required): public representative	Governor	7/18/2009
<b>Board of Banking</b> (Administration) Mr. Russ Ritter, Helena Qualifications (if required): public representative	Governor	7/1/2009
Mr. Jon Redlin, Lambert Qualifications (if required): state bank officer of a large size bank	Governor	7/1/2009
<b>Board of Hearing Aid Dispensers</b> (Labor and Industry) Mr. Steve Wilson, Helena Qualifications (if required): hearing aid dispenser (no masters)	Governor	7/1/2009
Ms. Jill Davis, Great Falls Qualifications (if required): public representative	Governor	7/1/2009
Mr. Brian Bolenbaugh, Missoula Qualifications (if required): hearing aid dispenser (no masters)	Governor	7/1/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Nursing</b> (Labor and Industry) Ms. Connie Reichelt, Havre Qualifications (if required): advanced practice registered nurse	Governor	7/1/2009
<b>Board of Physical Therapy Examiners</b> (Labor and Industry) Ms. Kim Miller, Virginia City Qualifications (if required): public member	Governor	7/1/2009
Ms. Patti Jo Lane, Great Falls Qualifications (if required): physical therapist	Governor	7/1/2009
Dr. Ron Peterson, Cascade Qualifications (if required): doctor of medicine	Governor	7/1/2009
<b>Board of Private Security</b> (Labor and Industry) Mr. Daniel Taylor, Glasgow Qualifications (if required): contract security company representative	Governor	8/1/2009
<b>Board of Radiologic Technologists</b> (Labor and Industry) Ms. Kelli Bush, Butte Qualifications (if required): radiologic technician	Governor	7/1/2009
<b>Board of Regents</b> (Higher Education) Mr. Mitchell Jessen, Dillon Qualifications (if required): student	Governor	6/30/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Board of Sanitarians</b> (Governor) Ms. Denise Moldroski, East Helena Qualifications (if required): sanitarian	Governor	7/1/2009
<b>Board of Veterans' Affairs</b> (Military Affairs) Mr. Keith Heavyrunner, Browning Qualifications (if required): Veteran and Resident of Region 3	Governor	8/1/2009
Mr. Byron Erickson, Helena Qualifications (if required): U.S. Department of Labor representative	Governor	8/1/2009
<b>Board of Water Well Contractors</b> (Natural Resources and Conservation) Mr. Kevin Haggerty, Bozeman Qualifications (if required): water well contractor	Governor	7/1/2009
<b>Burial Preservation Board</b> (Administration) Mr. Carl Fourstar, Poplar Qualifications (if required): representative of the Assiniboine-Sioux Tribes (Fort Peck)	Governor	8/22/2009
Dr. Randall Skelton, Missoula Qualifications (if required): physical anthropologist	Governor	8/22/2009
Mr. Steve Platt, Helena Qualifications (if required): representative of the State Historic Preservation Office	Governor	8/22/2009
Ms. Sara Young, Lame Deer Qualifications (if required): public representative	Governor	8/22/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Burial Preservation Board</b> (Administration) cont.		
Mr. Reuben Mathias, Pablo	Governor	8/22/2009
Qualifications (if required): representative of the Salish-Kootenai Tribes (Flathead)		
Ms. Katherine Rink, East Glacier	Governor	8/22/2009
Qualifications (if required): representative of the Blackfeet Tribe		
<b>Chief Water Judge</b> (not listed)		
Mr. C. Bruce Loble, Bozeman	Chief Justice	6/30/2009
Qualifications (if required): none specified		
<b>Community Health Center Advisory Group</b> (Public Health and Human Services)		
Mr. Larry Putman, Malta	Governor	7/1/2009
Qualifications (if required): public representative		
Ms. Kathy Kenyon, Billings	Governor	7/1/2009
Qualifications (if required): public representative		
Mr. Perry Howell, Billings	Governor	7/1/2009
Qualifications (if required): chief financial officer of a community health center		
Ms. Maria Clemons, Libby	Governor	7/1/2009
Qualifications (if required): executive employee of a community health center		
Ms. Marge Levine, Helena	Governor	7/1/2009
Qualifications (if required): Montana Primary Care Association's designee		

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Community Service Commission</b> (Labor and Industry)		
Mr. George Dennison, Missoula	Governor	7/1/2009
Qualifications (if required): representative of higher education		
Mr. Chris Kolstad, Ledger	Governor	7/1/2009
Qualifications (if required): public representative		
Mr. Gary Pfister, Helena	Governor	7/1/2009
Qualifications (if required): agency representative		
Mr. Jim Murphy, Helena	Governor	7/1/2009
Qualifications (if required): agency representative		
<b>Economic Development Advisory Council</b> (Commerce)		
Mr. Jim Atchison, Colstrip	Governor	7/23/2009
Qualifications (if required): public representative		
Ms. Elizabeth Marchi, Whitefish	Governor	7/23/2009
Qualifications (if required): public representative		
Mr. Jim Lee, Glendive	Governor	7/23/2009
Qualifications (if required): public representative		
Mr. Joe Menicucci, Belgrade	Governor	7/23/2009
Qualifications (if required): public representative		
Mr. Richard Sangray, Box Elder	Governor	7/23/2009
Qualifications (if required): public representative		

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Electronic Government Advisory Council</b> (Administration)		
Director Mary Sexton, Helena	Governor	6/18/2009
Qualifications (if required): agency representative		
Commissioner Ed Tinsley, Helena	Governor	6/18/2009
Qualifications (if required): local government official		
Mr. Shannon Hanson, Whitefish	Governor	6/18/2009
Qualifications (if required): public representative		
Mr. Tim Christensen, Missoula	Governor	6/18/2009
Qualifications (if required): public representative		
Mr. Christian Mackay, Helena	Governor	6/18/2009
Qualifications (if required): agency representative		
<b>Family Education Savings Oversight Committee</b> (Commissioner of Higher Education)		
Mr. Todd Buchanan, Billings	Governor	7/1/2009
Qualifications (if required): investment manager		
Mr. Jon Satre, Helena	Governor	7/1/2009
Qualifications (if required): public representative		
<b>Governor's HIV/AIDS Advisory Council</b> (Public Health and Human Services)		
Mr. Frank Gary, Butte	Governor	8/29/2009
Qualifications (if required): public representative		



## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Governor's HIV/AIDS Advisory Council</b> (Public Health and Human Services) cont.		
Mr. David Herrera, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Ms. Mary Jane Nealon, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Ms. Kathy Hall, Billings Qualifications (if required): public representative	Governor	8/29/2009
Ms. Wendy Doely, Kalispell Qualifications (if required): public representative	Governor	8/29/2009
Mr. Andrew Laue, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Mr. Rick Holman, Butte Qualifications (if required): public representative	Governor	8/29/2009
Ms. Kelly Parsley, Helena Qualifications (if required): public representative	Governor	8/29/2009
Ms. Vicki Peterson, Pablo Qualifications (if required): public representative	Governor	8/29/2009
Mr. Casey Rudd, Belgrade Qualifications (if required): public representative	Governor	8/29/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Governor's HIV/AIDS Advisory Council</b> (Public Health and Human Services) cont.		
Mr. Walter White Tail Feather, Poplar	Governor	8/29/2009
Qualifications (if required): public representative		
Ms. Donna Davis, Helena	Governor	8/29/2009
Qualifications (if required): public representative		
Mr. Jamee Greer, Missoula	Governor	8/29/2009
Qualifications (if required): public representative		
<b>Grant Review Committee</b> (Commerce)		
Mr. Andy Poole, Helena	Governor	6/30/2009
Qualifications (if required): representative of the Department of Commerce		
Ms. Ingrid Childress, Helena	Governor	6/30/2009
Qualifications (if required): representative of the Department of Labor and Industry		
Ms. Joni Stewart, Cut Bank	Governor	6/30/2009
Qualifications (if required): representative of private sector		
Ms. Linda Beck, Billings	Governor	6/30/2009
Qualifications (if required): representative of private sector		
Mr. John Cech, Billings	Governor	6/30/2009
Qualifications (if required): representative of a two-year postsecondary institution		

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Historical Records Advisory Board</b> (Historical Society)		
Ms. Jodi L. Allison-Bunnell, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Mr. Kim Allen Scott, Bozeman Qualifications (if required): public representative	Governor	8/29/2009
Ms. Peggy Gow, Deer Lodge Qualifications (if required): public representative	Governor	8/29/2009
Ms. Samantha K. Pierson, Libby Qualifications (if required): public representative	Governor	8/29/2009
Ms. Donna McCrea, Missoula Qualifications (if required): public representative	Governor	8/29/2009
Ms. Jodie Foley, Helena Qualifications (if required): State Archivist	Governor	8/29/2009
Ms. Faith Bad Bear-Bartlett, Hardin Qualifications (if required): public representative	Governor	8/29/2009
Mr. Jordan Goffin, Missoula Qualifications (if required): public representative	Governor	8/29/2009
<b>Judicial Standards Commission</b> (Justice)		
Judge Gary L. Day, Miles City Qualifications (if required): none specified	District Court Judges	6/30/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Judicial Standards Commission</b> (Justice) cont. Mr. John Murphy, Great Falls Qualifications (if required): public representative	Governor	7/1/2009
<b>Land Information Advisory Council</b> (Administration) Director Dan R. Bucks, Helena Qualifications (if required): Department of Revenue representative	Governor	6/30/2009
Commissioner Connie Eissinger, Brockway Qualifications (if required): local government representative	Governor	6/30/2009
Mr. Lance Clampitt, Bozeman Qualifications (if required): United States Interior Department representative	Governor	6/30/2009
Mr. Art Pembroke, Helena Qualifications (if required): local government representative	Governor	6/30/2009
Director Jeff Hagener, Helena Qualifications (if required): Department of Fish, Wildlife and Parks representative	Governor	6/30/2009
Director Mary Sexton, Helena Qualifications (if required): Department of Natural Resources and Conservation representative	Governor	6/30/2009
Mr. Alex Philip, Missoula Qualifications (if required): private sector representative	Governor	6/30/2009
Director Jim Lynch, Helena Qualifications (if required): Department of Transportation representative	Governor	6/30/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Land Information Advisory Council</b> (Administration) cont.		
Mr. Mike Birtles, Billings Qualifications (if required): United States Interior Department representative	Governor	6/30/2009
Ms. Catherine Maynard, Bozeman Qualifications (if required): United States Agriculture Department representative	Governor	6/30/2009
Mr. Don Patterson, Missoula Qualifications (if required): United States Agriculture Department representative	Governor	6/30/2009
Mr. Lorin Peterson, Pablo Qualifications (if required): tribal government representative	Governor	6/30/2009
Mr. Ed Madej, Helena Qualifications (if required): private sector representative	Governor	6/30/2009
Mr. Ken Wall, Missoula Qualifications (if required): GIS professional	Governor	6/30/2009
Mr. Michael Sweet, Missoula Qualifications (if required): GIS professional	Governor	6/30/2009
Ms. Annette Cabrera, Billings Qualifications (if required): local government representative	Governor	6/30/2009
Ms. Christiane von Reichert, Missoula Qualifications (if required): university representative	Governor	6/30/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Land Information Advisory Council</b> (Administration) cont. Mr. Rudy Cicon, Chester Qualifications (if required): land surveyor	Governor	6/30/2009
<b>Mental Disabilities Board of Visitors</b> (Governor) Rep. Holly Raser, Missoula Qualifications (if required): consumer of developmental disability services	Governor	7/1/2009
Mrs. Suzanne Hopkins, Lewistown Qualifications (if required): consumer of mental health services	Governor	7/1/2009
Ms. Teresa Lewis, Harlem Qualifications (if required): consumer of mental health services	Governor	7/1/2009
<b>Mint Committee</b> (Agriculture) Mr. Kenneth W. Smith, Kalispell Qualifications (if required): mint grower	Governor	7/1/2009
Mr. Larry Brosten, Kalispell Qualifications (if required): mint grower	Governor	7/1/2009
<b>Montana Campaign Finance Reform Advisory Council</b> (Secretary of State) Ms. Linda Vaughey, Helena Qualifications (if required): none specified	Secretary of State	7/10/2009
Sen. Lorents Grosfield, Big Timber Qualifications (if required): none specified	Secretary of State	7/10/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Campaign Finance Reform Advisory Council</b> (Secretary of State) cont. Attorney General Joseph P. Mazurek, Helena Qualifications (if required): none specified	Secretary of State	7/10/2009
Sen. Duane Grimes, Clancy Qualifications (if required): none specified	Secretary of State	7/10/2009
Sen. Debbie Shea, Butte Qualifications (if required): none specified	Secretary of State	7/10/2009
Rep. Cindy Younkin, Bozeman Qualifications (if required): none specified	Secretary of State	7/10/2009
Mr. Steve Brown, Helena Qualifications (if required): none specified	Secretary of State	7/10/2009
<b>Montana Consensus Council</b> (Administration) Sen. Lorents Grosfield, Big Timber Qualifications (if required): public representative	Governor	7/1/2009
Mr. Van Wolverton, Alberton Qualifications (if required): public representative	Governor	7/1/2009
Ms. Eleanor Yellowrobe, Havre Qualifications (if required): public representative	Governor	7/1/2009
Mr. Nickolas C. Murnion, Jordan Qualifications (if required): public representative	Governor	7/1/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Historical Society Board of Trustees</b> (Historical Society) Mr. Jim Court, Billings Qualifications (if required): public member	Governor	7/1/2009
<b>Montana Noxious Weed Management Advisory Council</b> (Agriculture) Mr. Terry Turner, Havre Qualifications (if required): representative of the Montana Weed Control Association	Director	6/30/2009
Ms. Pachy Burns, Big Timber Qualifications (if required): representative of a consumer group	Director	6/30/2009
Mr. Gary Olsen, Harlowton Qualifications (if required): representative of eastern counties	Director	6/30/2009
Mr. Todd Wagner, Glasgow Qualifications (if required): representative of agriculture crop production	Director	6/30/2009
Mr. Jim Story, Corvallis Qualifications (if required): representative of biological research and control	Director	6/30/2009
Mr. Jim Gordon, Huntley Qualifications (if required): representative of herbicide dealers and applicators	Director	6/30/2009
Ms. Margie Edsall, Sheridan Qualifications (if required): representative of western counties	Director	6/30/2009



## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Montana Wheat and Barley Committee</b> (Agriculture)		
Mr. Brian Kaae, Dagmar	Governor	8/20/2009
Qualifications (if required): resident of District 1		
Mr. Melvin Goffena, Wilsall	Governor	8/20/2009
Qualifications (if required): resident of District 6		
Ms. Kim Holzer, Stanford	Governor	8/20/2009
Qualifications (if required): resident of District 5		
<b>Motorcycle Safety Advisory Commission</b> (Commissioner of Higher Education)		
Mr. Steve Hofland, Helena	Governor	7/1/2009
Qualifications (if required): cycle group member		
<b>Noxious Weed Summit Advisory Council</b> (Agriculture)		
Mr. Kevin Chappell, Helena	Governor	7/26/2009
Qualifications (if required): representative of a state agency		
Mr. Jerry Marks, Missoula	Governor	7/26/2009
Qualifications (if required): representative of the MSU Extension Agency		
Mr. Scott Bockness, Billings	Governor	7/26/2009
Qualifications (if required): representative of a weed control association		
Mr. Jim Ghekiere, Chester	Governor	7/26/2009
Qualifications (if required): representative of a county weed district		

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Noxious Weed Summit Advisory Council</b> (Agriculture) cont.		
Mr. Dave Burch, Helena	Governor	7/26/2009
Qualifications (if required): representative of the Department of Agriculture		
Mr. Jim Olivarez, Missoula	Governor	7/26/2009
Qualifications (if required): representative of a federal agency		
Commissioner Dave Schulz, Virginia City	Governor	7/26/2009
Qualifications (if required): representative of the Montana Association of Counties		
Mr. Jon Wraith, Bozeman	Governor	7/26/2009
Qualifications (if required): representative of the MSU Agricultural Experiment Station		
Mr. Darrell Brieze, Havre	Governor	7/26/2009
Qualifications (if required): representative of an irrigation district		
Director Ron de Yong, Helena	Governor	7/26/2009
Qualifications (if required): Governor's representative		
Mr. Doug Dupuis, Pablo	Governor	7/26/2009
Qualifications (if required): Tribal representative		
Ms. Celestine Duncan, Helena	Governor	7/26/2009
Qualifications (if required): Crop Protection Product Industry representative		
<b>Petroleum Tank Release Compensation Board</b> (Environmental Quality)		
Mr. Steve Michels, Raynseford	Governor	6/30/2009
Qualifications (if required): service station dealer		

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Petroleum Tank Release Compensation Board</b> (Environmental Quality) cont. Ms. Adele J. Michels, Plentywood Qualifications (if required): public member	Governor	6/30/2009
<b>Poet Laureate</b> (Arts Council) Mr. Greg Pape, Stevensville Qualifications (if required): Montana poet	Governor	7/13/2009
<b>Postsecondary Scholarship Advisory Council</b> (Higher Education) Mr. LeRoy Schramm, Helena Qualifications (if required): experience in postsecondary education	Governor	6/20/2009
<b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife and Parks) Mr. Rick Miller, Colstrip Qualifications (if required): sportsperson	Governor	6/30/2009
Ms. Kathy Hadley, Deer Lodge Qualifications (if required): landowner	Governor	6/30/2009
Mr. Mike Penfold, Billings Qualifications (if required): sportsperson	Governor	6/30/2009
Mr. Jamie Byrne, Ekalaka Qualifications (if required): outfitter	Governor	6/30/2009
Ms. Donna McDonald, Alder Qualifications (if required): outfitter	Governor	6/30/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife and Parks) cont. Rep. John Ward, Helena Qualifications (if required): legislator	Governor	6/30/2009
Sen. Lane Larson, Billings Qualifications (if required): legislator	Governor	6/30/2009
Mr. Dan Vermillion, Livingston Qualifications (if required): Fish, Wildlife and Parks commissioner	Governor	6/30/2009
Mr. Gordon Haugen, Bozeman Qualifications (if required): sportsperson	Governor	6/30/2009
Mr. Max McDonald, Vaughn Qualifications (if required): landowner	Governor	6/30/2009
Mr. Doug Schott, Stevensville Qualifications (if required): outfitter	Governor	6/30/2009
Mr. Land Tawney, Missoula Qualifications (if required): sportsperson	Governor	6/30/2009
Mr. Richard Iverson, Culbertson Qualifications (if required): landowner	Governor	6/30/2009
Ms. Lindsay Giem, Twin Bridges Qualifications (if required): landowner	Governor	6/30/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Private Lands/Public Wildlife Council</b> (Fish, Wildlife and Parks) cont. Mr. Brett Todd, Big Timber Qualifications (if required): outfitter	Governor	6/30/2009
<b>Private Security Patrol Officers and Investigators</b> (Labor and Industry) Ms. Linda Sanem, Bozeman Qualifications (if required): licensed private investigator	Governor	8/1/2009
Mr. Leo Dutton, Helena Qualifications (if required): county sheriff's office representative	Governor	8/1/2009
Mr. Shad Foster, Butte Qualifications (if required): proprietary security organization representative	Governor	8/1/2009
Lt. Bryan Lockerby, Great Falls Qualifications (if required): city police department representative	Governor	8/1/2009
<b>Professional Engineers and Land Surveyors</b> (Labor and Industry) Mr. John Neil, Great Falls Qualifications (if required): licensed civil engineer	Governor	7/1/2009
Mr. Tom Heinecke, Kalispell Qualifications (if required): licensed mechanical engineer	Governor	7/1/2009
<b>Public Defender Commission</b> (Administration) Mr. Stephen Nardi, Kalispell Qualifications (if required): attorney nominated by State Bar	Governor	7/1/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Public Defender Commission</b> (Administration) cont.		
Commissioner Vic Miller, Harlem	Governor	7/1/2009
Qualifications (if required): public representative nominated by Senate President Mike Cooney		
Ms. Majel Russell, Billings	Governor	7/1/2009
Qualifications (if required): member of organization advocating on behalf of racial minorities		
<b>Research and Commercialization Technology Board</b> (Commerce)		
Mr. Jim Davison, Anaconda	Governor	7/1/2009
Qualifications (if required): public representative		
<b>Reserved Water Rights Compact Commission</b> (Natural Resources and Conservation)		
Mr. Chris D. Tweeten, Helena	Attorney General	6/1/2009
Qualifications (if required): none specified		
<b>State Workforce Investment Board</b> (Labor and Industry)		
Mr. Michael Grove, White Sulphur Springs	Governor	7/1/2009
Qualifications (if required): private sector representative		
Director Keith Kelly, Helena	Governor	7/1/2009
Qualifications (if required): veteran and a public sector representative		
Commissioner Connie Eissinger, Brockway	Governor	7/1/2009
Qualifications (if required): private sector representative		
Superintendent Linda McCulloch, Helena	Governor	7/1/2009
Qualifications (if required): public sector representative		

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont.		
Director Joan Miles, Helena Qualifications (if required): public sector representative	Governor	7/1/2009
Mr. Michael O'Neill, Butte Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Evan Barrett, Butte Qualifications (if required): Governor's representative	Governor	7/1/2009
Mr. Michael McGinley, Dillon Qualifications (if required): county commissioner	Governor	7/1/2009
Ms. Linda Woods, Darby Qualifications (if required): public sector representative	Governor	7/1/2009
Director Anthony Preite, Helena Qualifications (if required): public sector representative	Governor	7/1/2009
Mr. Jeff Rupp, Bozeman Qualifications (if required): public sector representative	Governor	7/1/2009
Mr. Dave Crum, Great Falls Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Martina Copps, Broadus Qualifications (if required): private sector representative	Governor	7/1/2009

**VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont.		
Mr. Thomas Curry, Billings Qualifications (if required): labor representative	Governor	7/1/2009
Mr. Michael DesRosier, Browning Qualifications (if required): county commissioner	Governor	7/1/2009
Mr. Kirk Hammerquist, Kalispell Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Jacquie Helt, Missoula Qualifications (if required): labor representative	Governor	7/1/2009
Ms. Maureen Kenneally, Butte Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Robbe Lindsay, Missoula Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Dan Miles, Butte Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Rodney Miller, Wolf Point Qualifications (if required): Sector 166 representative	Governor	7/1/2009
Ms. Gail Richardson, Bozeman Qualifications (if required): private sector representative	Governor	7/1/2009



## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State Workforce Investment Board</b> (Labor and Industry) cont.		
Mr. Alan Skari, Chester Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Karen Sullivan, Missoula Qualifications (if required): private sector representative	Governor	7/1/2009
Mrs. Sandi Miller, Helena Qualifications (if required): private sector representative	Governor	7/1/2009
Ms. Georgia Gibbs-Atkinson, Poplar Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Thomas McKenna, Lewistown Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. George Kipp, Browning Qualifications (if required): Section 166 representative	Governor	7/1/2009
Mr. Jeff Tochihara, Columbus Qualifications (if required): private sector representative	Governor	7/1/2009
Mr. Tyler Trevor, Helena Qualifications (if required): public sector representative (Higher Education)	Governor	7/1/2009
Mr. Brad Eldridge, Helena Qualifications (if required): public sector representative	Governor	7/1/2009

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>State-Tribal Economic Development Commission</b> (Governor)		
Ms. Caroline Brown, Harlem	Governor	6/30/2009
Qualifications (if required): representative of the Fort Belknap Community		
Mr. Shawn Real Bird, Garryowen	Governor	6/30/2009
Qualifications (if required): representative of the Crow Tribe		
Mr. Russell Boham, Great Falls	Governor	6/30/2009
Qualifications (if required): representative of the Little Shell Band of Chippewa		
Mr. Ronald Doney, Great Falls	Governor	6/30/2009
Qualifications (if required): representative of the Little Shell Band of Chippewa (alternate)		
<b>Telecommunications Advisory Council Services for Persons with Disabilities</b> (Public Health and Human Services)		
Ms. Cheryl Gillespie, Helena	Governor	7/1/2009
Qualifications (if required): representative of the largest local exchange company		
Mr. Eric Eck, Helena	Governor	7/1/2009
Qualifications (if required): representative of the Public Service Commission		
Ms. Christy Keto, Havre	Governor	7/1/2009
Qualifications (if required): representative of an interLATA interexchange carrier		
Ms. Julia Saylor, Helena	Governor	7/1/2009
Qualifications (if required): having a hearing disability		

## VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Tourism Advisory Council</b> (Commerce) Mr. Mark Browning, Miles City Qualifications (if required): representative of Custer Country	Governor	7/1/2009
Ms. Cyndy Andrus, Bozeman Qualifications (if required): representative of Yellowstone Country	Governor	7/1/2009
Ms. Dyani Bingham, Billings Qualifications (if required): Tribal Government representative	Governor	7/1/2009
Ms. Marilyn Polich, Butte Qualifications (if required): representative of Goldwest Country	Governor	7/1/2009
Ms. Beverly Harbaugh, Jordan Qualifications (if required): Missouri River Country representative	Governor	7/1/2009
<b>Water Judge of the Clark Fork River Basin Water Division</b> (District Court) Judge Ted Mizner, Anaconda Qualifications (if required): elected	District Court	6/30/2009
<b>Water Judge of the Lower Missouri River Basin Water Division</b> (District Court) Judge David Cybulski, Plentywood Qualifications (if required): elected	District Court	6/30/2009
<b>Water Judge of the Upper Missouri River Basin Water Division</b> (District Court) Judge Jeffrey Sherlock, Helena Qualifications (if required): elected	District Court	6/30/2009

**VACANCIES ON BOARDS AND COUNCILS -- JUNE 1, 2009 THROUGH AUGUST 31, 2009**

<u>Board/current position holder</u>	<u>Appointed by</u>	<u>Term end</u>
<b>Water Judge of the Yellowstone River Basin Water Division</b> (District Court) Judge Joe L. Hegel, Forsyth Qualifications (if required): elected	District Court	6/30/2009
<b>Western Interstate Commission for Higher Education</b> (Higher Education) Ms. Mary Sheehy Moe, Great Falls Qualifications (if required): higher education representative	Governor	6/19/2009