

MONTANA ADMINISTRATIVE REGISTER

ISSUE NO. 11

The Montana Administrative Register (MAR), a twice-monthly publication, has three sections. The notice section contains state agencies' proposed new, amended or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The rule section indicates that the proposed rule action is adopted and lists any changes made since the proposed stage. The interpretation section contains the attorney general's opinions and state declaratory rulings. Special notices and tables are found at the back 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 Administrative Rules Bureau at (406) 444-2055.

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

In the matter of the adoption)	NOTICE OF PROPOSED
of new rules I and II and the	)	ADOPTION AND
amendment of ARM 2.43.615 and	)	AMENDMENT
2.43.616 pertaining to Family)	
Law Orders for retirement	)	NO PUBLIC HEARING
systems and plans administered	)	CONTEMPLATED
by the Public Employees')	
Retirement Board)	

TO: All Concerned Persons

1. On July 25, 2002, the Public Employees' Retirement Board proposes to adopt new rules I and II and amend ARM 2.43.615 and 2.43.616 pertaining to Family Law Orders for the Public Employees' Defined Benefit Retirement Plan and Defined Contribution Retirement Plan and the Judges', Sheriffs', Game Wardens' and Peace Officers', Highway Patrol Officers', Municipal Police Officers', and the Firefighters' Unified Retirement Systems. These retirement systems are administered by the Public Employees' Retirement Board.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on July 1, 2002, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; TDD 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

3. The proposed new rules provide as follows:

RULE I FAMILY LAW ORDERS -- GENERAL REQUIREMENTS

- (1) Upon request, MPERA will provide a checklist of mandatory and optional family law order (FLO) provisions.
- (2) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.303.
- (3) An account cannot be established for an alternate payee in a retirement system or plan.
- (4) A FLO may not force a member to:
 - (a) terminate employment;
 - (b) apply for retirement; or
 - (c) belong to a specific retirement system or plan.
- (5) Upon receipt of a certified copy of a stay from the issuing court or the Montana supreme court, the MPERA and board will suspend further consideration or implementation of a proposed FLO. Unless otherwise directed by court order, the MPERA will retain payments withheld prior to receipt of the stay

and simultaneously resume making payments of participant's full benefit. The MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the MPERA will proceed with consideration, approval and implementation procedures.

(6) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a FLO. If a proposed FLO is not received before the order expires, payments will resume and any retained payments will be made to the participant.

(7) The administrative cost, if any, of a FLO will be billed to the party filing the proposed FLO with the board, unless another party is designated in the FLO to pay the cost. Amounts owing may be offset against payments to be received by the appropriate party.

(8) An alternate payee may receive payment by electronic fund transfer upon submission of a properly executed form required by the MPERA.

(9) An alternate payee must promptly inform the MPERA of any change of name or address.

AUTH: 19-2-403 and 19-2-907, MCA
IMP: 19-2-907, MCA

RULE II FAMILY LAW ORDERS FOR THE PERS DEFINED CONTRIBUTION RETIREMENT PLAN (1) This rule applies only to the PERS defined contribution retirement plan.

(2) A "participant" may be a member or a "primary" or "contingent beneficiary".

(3) Disability benefits under the defined contribution plan may not be divided by a FLO.

(4) In the PERS defined contribution retirement plan, the payments to an alternate payee are allowed as follows:

(a) The FLO must state the amount or the proportion, or it must describe the method for calculating the amount or proportion.

(b) If the participant receives lump sum payments in addition to periodic payments, the FLO must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.

(c) The fixed amount, the designated monthly dollar amount, the designated number of months and the proportion may not be changed by future conditions or events.

(d) Payments will end when:

(i) payments to the participant end;

(ii) the fixed amount is paid; or

(iii) the account is depleted.

AUTH: 19-2-403 and 19-2-907, MCA
IMP: 19-2-907, MCA

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

2.43.615 FAMILY LAW ORDERS -- CONTENTS AND DURATION FOR DEFINED BENEFIT PLANS (1) ~~The division will make available to the public a checklist of required and optional Family Law Order characteristics and representative model forms approved for inclusion in a proposed Family Law Order (FLO). Pursuant to this rule and ARM 2.43.616, the board will accept and apply family law orders (FLOs) in the public employees' defined benefit retirement plan, and the judges', sheriffs', game wardens' and peace officers', highway patrol officers', municipal police officers', and firefighters' unified retirement systems.~~

(2) ~~A FLO may order the splitting and payment of the sums payable to specific participants from a retirement system. The term participant will be construed to include all possible appropriate participants unless specifically defined in the FLO. If specific participants are not named, retirement benefits or amounts payable to another upon the death of any and all participants will be allocated according to the terms of the FLO. Specific designations of a participant(s) in a FLO may include:~~

(a) ~~Ffor all systems and plans listed in (1), an individual "member" (active, inactive or retired);~~

(b) ~~Ffor the public employees' defined benefit retirement plan, or the judges', sheriffs', and game wardens' and peace officers' retirement systems, "primary" and/or and "contingent beneficiary(ies) beneficiaries" eligible to receive a lump sum payment(s) payment upon the death of an active or inactive member of the system and "contingent annuitants" designated by the member to receive continuing retirement benefits upon the death of the retired member.; and~~

(c) ~~Ffor the highway patrol officers', municipal police officers', and firefighters' unified retirement systems, "survivors" (i.e., surviving spouses and/or surviving dependent children of the member) and named "contingent beneficiary(ies)" "designated beneficiaries" who are eligible to receive lump sum payments upon the death of a member leaving no "survivors."~~

(3) ~~Payments under a FLO must be the same type and form as, and for no greater amount or duration than those available to any participant from the account being assigned. A benefit, option or payment available for another at the discretion of the participant may be subject to a FLO. Only the participant can be required to designate a specific option or request a refund. (For example, if a participant may choose a beneficiary, the FLO may require the participant to name a specific alternate payee as a beneficiary or require that a portion of the named beneficiary's payment be paid to the alternate payee.)~~

(4)(3) ~~If benefits are currently payable to the participant(s), the FLO may specify A FLO may specify a future effective date provided:~~

(a) ~~a FLO may not be effective any earlier than the date the FLO is received by MPERA;~~

(b) ~~if the participant is a retiree, the first payment that may be divided is the first benefit payment following the~~

month MPERA receives the FLO;

~~(c) However, no a FLO may not provide for payments to an alternate payee prior to the date on which the participant first becomes eligible for receives a payment from the retirement system or plan; or~~

(d) the MPERA must receive the FLO in the month before the affected payment or payments are made.

~~(5)(4) Unless otherwise specified in the FLO, payments to an alternate payee will continue only until while the participant is receiving benefits cease to be paid to any participant payments. Payments The FLO may further limit payments to an alternate payee may be further limited in the FLO to:~~

~~(a) the life of the participant whose payment rights are being transferred_{7i}~~

~~(b) a specified maximum time_{7i}~~

~~(c) the life of the alternate payee_{7i} or~~

~~(d) the life of a designated participant.~~

~~(6)(5) The Two basic types of payment distributions are payments allowed to alternate payees are: "defined sum" and "proportionate payments."~~

~~(a) A "defined sum" must designate a specific total dollar amount to be paid to the alternate payee in the form of a fixed dollar amount payable for a designated maximum number of months. (For example: "A sum of \$9,000 to be paid at a rate of \$150 per month for 60 monthly payments or until benefits cease, whichever comes first".) If the fixed monthly payment designated is more than the total monthly benefit or payment to the participant, the lesser amount will be paid for the designated number of months, or until any benefits cease until the alternate payee receives the specific total dollar amount. If the defined sum cannot be divided evenly by the number of payments or monthly amount, any odd amount will be paid in the first payment. The defined sum, the designated monthly dollar amount, and the designated number of months will not be increased by subsequent conditions or events. Payments will cease when the defined sum is paid or when payments from the account end.~~

~~(b) "Proportionate A FLO may order "proportionate payments" may be ordered by designating either a fixed percentage of benefits payable or a formula describing how to calculate the percentage must be calculated at the time payments begin. The fixed percentage must indicate be expressed as a specific percentage of each payment to be paid to the alternate payee, either as a percentage or as a fraction for which the numerator and denominator are indicated. (For example: "50% of any withdrawal of member contributions.") A formula calculating a fixed percentage may use either months, years, or dollar amounts to establish a proportionate benefit. for an alternate payee. (For examples: "a fixed percentage of benefits which is equal to 50% of 7 years divided by the total number of years of service used to calculate the participant's benefit"; or "a fixed percentage of benefits which is described by dividing \$150 per month by the total monthly benefit amount payable for service retirement when participant's payments begin".) All~~

~~proportionate payments to the alternate payee will include the same proportion of any guaranteed annual benefit allowance, cost of living allowance, post retirement adjustment or similar increase payable to the participant in any month during which the FLO is in effect.~~

AUTH: 19-2-403 and 19-2-907, MCA
IMP: 19-2-907, MCA

2.43.616 FAMILY LAW ORDERS -- APPROVAL AND IMPLEMENTATION FOR DEFINED BENEFIT PLANS (1) ~~Information concerning a participant's account will only be released subject to the terms of ARM 2.43.303.~~

(2)(1) ~~A participant or alternate payee must submit a certified copy of a court judgement, decree or order containing a proposed Family Law Order~~ family law order (FLO) to the division MPERA for board approval. ~~The board may delegate~~ has delegated authority for approval of a proposed FLO to the division executive director of MPERA.

(3)(2) ~~No FLO is effective prior to October 1, 1993. All FLOs must be applied prospectively and may only allocate future payments. However, a FLO may include procedures for collecting retroactive amounts from future payments. The effective date for a required initiation or change in a type or form of benefit, option, payment, or beneficiary designation will be the date the participant properly executes and files the appropriate corresponding form with the division. Unless a later date is specified in the proposed FLO, the effective date for purposes of allocating benefits and payments in progress, is the 1st day of the month following receipt. For purposes of allocating a lump sum payment, the FLO must be received before the payment is mailed or otherwise conveyed to the participant. If a member requests a refund, the MPERA will notify the alternate payee. The alternate payee may request a direct payment or may roll the payment over to another eligible plan. The alternate payee must inform MPERA of his or her choice and if necessary, provide any information for a rollover to MPERA within 60 days of the date of notification. Otherwise a direct payment will be made to the alternate payee after 60 days.~~

(4)(3) ~~Beginning on the appropriate effective date, payments to the participant, if any, will be adjusted as directed in the proposed FLO and payments to be received by the alternate payee(s), if any, will be retained by the division MPERA. If the proposed FLO is approved, retained payments will be paid to the alternate payee(s); if not approved, to the participant.~~

(5)(4) ~~The board's decision to approve or not approve a proposed FLO is final unless the participant or alternate payee files a request for an administrative contested case hearing within 10 days from the date the division MPERA sends notice of the decision. If an administrative hearing is properly requested, the board must make the final administrative decision must be made by the board after receiving the hearing examiner's proposed decision.~~

~~(6) Upon receipt of a certified copy of a stay from the issuing court or the Montana Supreme Court, the division and board will suspend further consideration or implementation of a proposed FLO. Unless otherwise directed by court order, the division will retain payments withheld prior to receipt of the stay and simultaneously resume making payments of participant(s) full benefit(s). The division will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the division will proceed with recognition, approval and implementation procedures as outlined herein. Any amount owing the alternate payee may be paid out of any payments owing the participant.~~

~~(7) Costs of reviewing and administering the FLO, including actuarial analysis and attorneys' fees, may be assessed by the board and be billed to the party filing the proposed FLO with the board, unless another party is designated in the FLO to pay those costs. Amounts owing plus interest thereon at an annualized effective rate of 8% may be offset against payments to be received by the appropriate party.~~

~~(8) An alternate payee may receive payment by electronic fund transfer upon submission of a properly executed form required by the division.~~

~~(9) An alternate payee must promptly inform the division of any change of name or address.~~

AUTH: 19-2-403 and 19-2-907, MCA

IMP: 19-2-907, MCA

REASON: The proposed new rules pertaining to family law orders (FLOs) and proposed amendments to existing FLO rules are necessary because of the adoption of a Defined Contribution Retirement Plan (DCRP) within the Public Employees' Retirement System (PERS). Like the retirement benefits of Defined Benefit Retirement Plan (DBRP) participants, the retirement accounts of DCRP participants are subject to modification by family law orders. While the two plans' processes and distribution options are similar in some respects, there are also several differences.

RULE I. Rather than reiterate identical processes in two separate rules, one for the DBRP and one for the DCRP, all processes applicable to both DBRP FLOs and DCRP FLOs are found in Rule I. This rule ensures that current DBRP FLO procedures are incorporated into the DCRP FLO procedures.

FLOs are not effective until approved by the Board. Participants may receive retirement benefits or accounts prior to approval of a FLO. New language recognizes that temporary restraining orders may delay payment pending approval of the FLO.

Federal law does not permit charging the cost of implementing a FLO to either the participant or the alternate payee. State law provides for recovering administrative costs. Subsection (7)

lets members know they may be responsible for those administrative costs, and how they will be assessed.

RULE II. This proposed rule is necessary because DCRP participants are entitled to an account balance upon retirement rather than a statutorily determined benefit amount. A FLO that divides an account balance must specify distribution options markedly different from FLOs that divide DBRP retirement benefits.

ARM 2.43.615: The amendments to this rule are necessary to distinguish DBRP FLOs from DCRP FLOs and to address statutory changes affecting the Montana Public Employees' Retirement Board, its staff, and the retirement systems it administers.

The "division" no longer exists. The Public Employees' Retirement Board is now administratively attached to the Department of Administration. The Board's employees, who used to be referred to as the Public Employees' Retirement Division, are now the Montana Public Employee Retirement Administration.

Previous language designating the "effective date", a "defined sum", and "proportionate payments" was confusing and resulted in the Board rejecting many FLOs. Proposed language is needed to clearly describe these terms and to explain how "odd" payment amounts are treated.

Subsections that apply to both the DBRP and the DCRP are moved to one location, new RULE I, for easy reference. Subsections that restate statutory language are unnecessary, and are therefore deleted.

ARM 2.43.616: The amendments to this rule are necessary to distinguish the approval and implementation of DBRP FLOs from the approval and implementation of DCRP FLOs; to address statutory changes affecting the Montana Public Employees' Retirement Board, its staff, and the retirement systems it administers; and to conform to federal law requirements.

FLOs are not effective until approved by the Board. Participants sometimes begin receiving retirement benefits prior to approval of a FLO. In the event this occurs, proposed language recognizes that although the alternate payee cannot retroactively receive a portion of the participant's previous benefit payments, an amount equal to the alternate payee's missed share can be allocated from the participant's future benefit payments.

Alternate payees entitled to lump sum payments should not be permitted to unreasonably delay payment of retirement benefits or accounts to the retirement plan participant. Subsection (2) limits the time in which the alternate payee must elect whether to receive their portion of the retirement benefit or account in a lump sum or to have the amount rolled to another qualified

plan, and provides for a default in the event a timely election is not made.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than July 12, 2002.

6. If persons who are directly affected by the proposed actions wish to express their data, views, and 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 Lucie Willson, Public Employees' Retirement Board, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; FAX 406-444-5428; e-mail lwillson@state.mt.us. A written request for hearing must be received no later than July 12, 2002.

7. If the agency receives requests for a public hearing on the proposed actions from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed actions; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 4,317 persons based on 2001 payroll reports of active and retired members.

8. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131; faxed to the office at 406-444-5428; or e-mailed to lwillson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on June 3, 2002.

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

In the matter of the	)	NOTICE OF PROPOSED
adoption of new rules I through	)	ADOPTION
III pertaining to Qualified)	
Domestic Relations Orders for	)	NO PUBLIC HEARING
the Deferred Compensation (457)	)	CONTEMPLATED
Plan Administered by the Public)	
Employees' Retirement Board)	

TO: All Concerned Persons

1. On July 25, 2002, the Public Employees' Retirement Board proposes to adopt new rules I through III pertaining to Qualified Domestic Relations Orders for the Deferred Compensation (457) Plan administered by the Public Employees' Retirement Board.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Public Employees' Retirement Board no later than 5:00 p.m. on July 1, 2002, to advise us of the nature of the accommodation that you need. Please contact Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; TDD 406-444-1421; FAX 406-444-5428; e-mail lwillson@state.mt.us.

3. The proposed new rules provide as follows:

RULE I QUALIFIED DOMESTIC RELATIONS ORDERS -- GENERAL REQUIREMENTS (1) The board will accept and implement qualified domestic relations orders (QDROs) in the deferred compensation (457) plan sponsored by the state of Montana.

(2) Upon request, MPERA will provide to the public a checklist of required and optional provisions for QDROs.

(3) Information concerning a participant's account will only be released subject to the terms of ARM 2.43.303.

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

RULE II QUALIFIED DOMESTIC RELATIONS ORDERS -- CONTENTS
(1) A qualified domestic relations order (QDRO) must contain the following information:

(a) the name, last known mailing address, date of birth and social security number of the participant;

(b) the name, last known mailing address, date of birth and social security number of the alternate payee;

(c) the amount or percentage of the participant's account, distribution, or payments to be paid by the deferred

compensation (457) plan to the alternate payee, or a description of how to calculate the amount or percentage;

(d) the number of payments or the period of time to which the order applies if the participant is receiving periodic or annuity payments; and

(e) if the participant receives lump sum payments in addition to periodic payments, the QDRO must specify a separate proportion or fixed amount to be applied to the lump sum payments. Otherwise the lump sum payments will not be divided.

(2) A QDRO must meet the following requirements:

(a) a QDRO must create or recognize the right of an alternate payee to all or a portion of a participant's account;

(b) a QDRO must relate to Title 40, MCA marital property rights, alimony, or child or other dependent support;

(c) the specified distribution or payment must be of a type or form permitted under the deferred compensation (457) plan;

(d) the specified amount or duration of the payment to the alternate payee may not be greater than that available to the participant under the deferred compensation (457) plan;

(e) the alternate payee may not be granted payment of any benefits that have already been awarded to another alternate payee under another order previously determined to be a QDRO; and

(f) the QDRO must contain a statement that the QDRO is subject to review and approval by the board.

AUTH: 19-50-102, MCA

IMP: 19-50-102, MCA

RULE III QUALIFIED DOMESTIC RELATIONS ORDERS -- APPROVAL AND IMPLEMENTATION

(1) A participant or alternate payee must submit a certified copy of a domestic relations order (DRO) to the MPERA for board approval. The board may delegate authority for approval to the executive director.

(2) The MPERA will notify the participant and the alternate payee when it receives a certified copy of a DRO. The notice will explain the procedures for determining if the DRO is qualified.

(3) While reviewing the DRO, the board may take steps to safeguard the alternate payee's rights. The steps the board may take include, but are not limited to, the following:

(a) prevent payments from the participant's account, but allow the participant to manage the investments;

(b) segregate the amounts, and earnings thereon, that will be owed to the alternate payee if the DRO is qualified;

(c) pay the non-segregated amounts, with any earnings thereon, to the participant if the DRO is not qualified within 18 months of the date it was received by MPERA and the participant is entitled to distribution of the account; and

(d) apply the DRO prospectively if approved more than 18 months after the date it was first received by MPERA.

(4) Any fees required by a third party administrator or record keeper for segregated accounts will be charged against

the participant's account unless the qualified domestic relations order (QDRO) states the fee should be deducted from amounts paid to the alternate payee.

(5) The information and requirements identified in [RULE II] are considered the minimum the board needs to administer a QDRO. Domestic relations orders that do not contain the minimum information or address the minimum requirements are not QDROs and will be rejected by the board as not qualified. Rejected orders will be returned to the appropriate party with information on how to have the DRO qualified.

(6) Once the DRO is qualified, the board will notify the participant and the alternate payee that the DRO is being implemented as a QDRO.

(7) The alternate payee may receive their payment only as a direct payment, a rollover, or a transfer.

(8) If the alternate payee is already a participant or is eligible to participate in the state's deferred compensation (457) plan, the alternate payee's payments may be made to the alternate payee's plan account. However, if the alternate payee is not eligible to participate in the state's deferred compensation (457) plan, a plan account cannot be established for the alternate payee.

(9) Upon receipt of a certified copy of a stay from the issuing court or the Montana supreme court, the MPERA and board will suspend further consideration or implementation of a DRO. Unless otherwise directed by court order, the MPERA will not distribute the participant's 457 account pending resolution of the stay. The MPERA will take further action only on receipt of a certified copy of an order directing such action. If the stay is lifted, the MPERA will proceed with consideration, approval and implementation procedures.

(10) A restraining order may be used to temporarily stop or prohibit payment to a participant. The order must contain the same information identifying the participant and alternate payee as required for a QDRO. If a DRO is not received before the order expires, payments will resume and any retained payments will be made to the participant.

(11) The board will not charge a fee for approving or implementing a QDRO. However, the board may charge a reasonable fee if a participant, an alternate payee or any of their attorneys make excessive demands of MPERA staff to provide assistance in drafting a DRO which can be qualified.

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

REASON: The proposed new rules pertaining to qualified domestic relations orders (QDROs) are necessary because the Montana Public Employees' Retirement Board (Board) has adopted in its Deferred Compensation (457) Plan Document new federal laws that permit distribution of deferred compensation (457) plan accounts pursuant to QDROs. Although deferred compensation (457) plan QDROs are similar to retirement system family law orders (FLOs),

there are important differences in implementation and distribution that are addressed in these rules.

RULE I: Deferred compensation (457) plan participants must know where to obtain information regarding qualified domestic relations orders (QDROs). Alternate payees need to be aware that information concerning the amount of money in a participant's deferred compensation (457) plan account is confidential and can only be obtained through the participant or by court order.

RULE II: Federal law mandates that QDROs contain specific identifying information, implement state domestic relations court orders, specify the payment to be made to the alternate payee, and be approved by the deferred compensation (457) plan sponsor (the board). This rule informs 457 participants and alternate payees of these requirements to assist the parties in drafting domestic relations orders that can be qualified.

RULE III: Domestic relations orders are not effective and cannot be implemented until approved by the Board. Participants may become entitled to their 457 accounts and request distribution prior to approval of the QDRO. Subsections (1) through (4) ensure that both the participant's and the alternate payee's rights in the participant's 457 account are protected pending approval of the QDRO.

Subsections (5) through (11) notify participants and alternate payees of the Board's QDRO approval process and QDRO distribution policies, as well as alternate payee distribution requirements found in federal law.

4. Concerned persons may submit their data, views, or arguments concerning the proposed adoption in writing to Mike O'Connor, Executive Director, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131; FAX 406-444-5428; e-mail moconnor@state.mt.us no later than July 12, 2002.

5. If persons who are directly affected by the proposed adoption wish to express their data, views, and 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 Lucie Willson, Public Employees' Retirement Board, P.O. Box 200131, Helena, MT 59620-0131; telephone 406-444-7939; FAX 406-444-5428; e-mail lwillson@state.mt.us. A written request for hearing must be received no later than July 12, 2002.

6. If the agency receives requests for a public hearing on the proposed adoption from either 10% or 25, whichever is less, of the persons who are directly affected by the proposed adoption; from the appropriate administrative rule review committee of the legislature; from a governmental subdivision or

agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 735 persons based on 2001 payroll reports of active and retired members.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding public retirement rulemaking actions. Such written request may be mailed or delivered to Lucie Willson, Public Employees' Retirement Board, 100 North Park Avenue, Suite 220, P.O. Box 200131, Helena, MT 59620-0131; faxed to the office at 406-444-5428; or e-mailed to lwillson@state.mt.us, or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

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

/s/ Terry Teichrow
Terry Teichrow, President
Public Employees' Retirement Board

/s/ Kelly Jenkins
Kelly Jenkins, General Counsel and
Rule Reviewer

/s/ Dal Smilie
Dal Smilie, Chief Legal Counsel and
Rule Reviewer

Certified to the Secretary of State on June 3, 2002.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the	)	NOTICE OF PROPOSED
amendment of ARM 23.4.501,	)	AMENDMENT
23.4.502, and 23.4.503 which)	
provide the relevant	)	NO PUBLIC HEARING
definitions and set forth the	)	CONTEMPLATED
requirements for collection)	
and storage of DNA)	

TO: All Concerned Persons

1. On July 15, 2002, the Department of Justice proposes to amend ARM 23.4.501, 23.4.502, and 23.4.503, which provide the relevant definitions and set forth the requirements for collection and storage of DNA.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on July 5, 2002 to advise us of the nature of the accommodation that you need. Please contact Ali Sheppard, Department of Justice, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401; (406) 444-2026; FAX (406) 444-3549; e-mail asheppard@state.mt.us.

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

23.4.501 DEFINITIONS Unless the context requires otherwise, the following definitions apply to this subchapter:

(1) remains the same.

(2) "Buccal swab" means a swab taken from the mouth area to collect cheek cells.

(2) through (11) remain the same, but are renumbered (3) through (12).

~~(12)~~ (13) "Marker" means a genetic trait found in DNA including, but not limited to, the DNA marker D1S80 and the STR loci CSF1PO, TH01, TPOX, vWA (formerly vWF), D16S539, D7S820, D13S317, D5S818, FGA, D3S1358, D8S1179, D18S51, D21S11 and Amelogenin.

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

AUTH: 44-6-110, MCA

IMP: 44-6-101, MCA

The amendments are necessary to allow the use of "buccal swabs" to collect DNA samples for CODIS, and to update the definition of the term "marker" to reflect the additional markers available for CODIS.

23.4.502 COLLECTION OF BIOLOGICAL SAMPLES FOR DNA ANALYSIS (1) A buccal swab sample shall be collected by the appropriate law enforcement agency, corrections facility or other statutorily authorized agency.

~~(1) A DNA~~ (2) A blood sample shall be collected by a physician, registered nurse, licensed practical or vocational nurse, licensed clinical laboratory technologist, or any other health care worker who is trained to properly collect blood samples or other biological specimens.

~~(2)~~ (3) The division shall provide a reasonable quantity of DNA sample collection kits to criminal justice or law enforcement agencies in this state at no cost to that agency. A DNA sample collection kit shall consist of a mailing envelope bearing an international biohazard symbol containing another envelope, a pair of gloves, two pieces of evidence tape, a kit shipping seal, a collection card with a swab collection envelope, a plastic bag with two cotton swabs, an absorbent pad, a fiberboard shipping container bearing an international biohazard symbol, a specimen vial containing EDTA, a secondary mailing tube and absorbent material, a DNA database collection card, instructions for collection of DNA samples, and any other items which may be designated as appropriate by the division.

~~(3)~~ (4) When collecting a DNA sample, a submitting agency shall use a DNA sample collection kit provided by the division, or any other method which is generally considered acceptable for the collection, storage and transportation of biological specimens. ~~Any collected DNA sample, however, must be deposited in a sterile vacutainer which contains the preservative EDTA (known commonly by medical professionals as the purple or lavender topped tube). The submitting agency must not return the used needle, holder, or used pre pad to the division.~~

~~(4)~~ (5) If the DNA sample collecting kit provided by the division is not utilized, the submitting agency shall package the sample for shipment to the division in compliance with United States postal service regulations (Domestic Mail Manual § CO23.10.4) for mailing biological specimens. ~~The sample shall be enclosed in a primary container and a secondary container, with sufficient absorbent material to prevent, in the case of leakage of the primary container, any materials from escaping the outside shipping container. The outside shipping container should be plainly marked "Biological Specimen Handle With Care" and should bear the international biohazard symbol. The outside container shall also be secured with a tamper proof seal.~~

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

(a) through (i) remain the same.

(j) name and signature of the individual drawing collecting the DNA sample;

(k) through (m) remain the same.

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

AUTH: 44-6-110, MCA
IMP: 44-6-103, MCA

The amendments are necessary to describe who may collect a buccal swab sample and to update what is contained in a DNA sample collection kit. The amendments are also necessary because the division no longer provides blood sample kits, only buccal swab sample kits are provided.

23.4.503 STORAGE OF DNA SAMPLES (1) ~~Before submission to the division, Tthe DNA sample should be kept refrigerated in a secure location, and mailed to the division Wwithin seven days after its collection, the DNA sample should be sent to the division.~~

AUTH: 44-6-110, MCA
IMP: 44-6-103, MCA

The amendments are necessary because the division no longer supplies or collects blood sample kits and buccal swabs do not need to be refrigerated.

4. Concerned persons may submit their data, views or arguments concerning the proposed amendment in writing to Ali Sheppard, Assistant Attorney General, Attorney General's Office, P.O. Box 201401, Helena, MT 59620-1401, FAX (406) 444-3549, by surface mail, or electronically to asheppard@state.mt.us. Comments must be received no later than July 12, 2002.

5. If persons who are directly affected by the proposed amendment wish to express their data, views and 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 Ali Sheppard, Assistant Attorney General, Office of the Attorney General, P.O. Box 201401, Helena, MT 59620-1401. A written request for hearing must be received no later than July 12, 2002.

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. Ten percent of those persons directly affected has been determined to be 80 persons based on the 800 samples collected by the division over the course of a year.

7. The Department of Justice maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding matters relating to the Department of Justice. Such written request may be mailed or delivered to the Office of the Attorney General, Attn: Interested Party List, P.O. Box 201401, Helena, MT 59620-1401, faxed to the office at (406) 444-3549, e-mailed to asheppard@state.mt.us, or may be made by completing a request form at any rules hearing held by the Department.

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

By: /s/ Mike McGrath
MIKE McGRATH, Attorney General
Department of Justice

/s/ Ali Sheppard
ALI SHEPPARD, Rule Reviewer

Certified to the Secretary of State June 3, 2002.

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

In the matter of the proposed) NOTICE OF PUBLIC HEARING ON
amendment of ARM 8.32.303,) PROPOSED AMENDMENT
8.32.307, 8.32.411, 8.32.425,)
8.32.1503, 8.32.1504, and)
8.32.1508 pertaining to)
nursing licensure matters)

TO: All Concerned Persons

1. On July 3, 2002, at 10:00 a.m. a public hearing will be held in the Fourth Floor Conference Room, 301 South Park, Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The Department of Labor and Industry 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 by not later than 5:00 p.m., June 26, 2002, to advise us of the nature of the accommodation that you need. Please contact the Board of Nursing, Attn: Ms. Jill Caldwell, 301 South Park, P.O. Box 200513, Helena, MT 59620-0513; telephone (406)841-2340; fax (406)841-2343 or e-mail dlibsdnur@state.mt.us.

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

8.32.303 NURSE ANESTHETIST PRACTICE (1) Nurse anesthetist practice is the independent and/or interdependent performance of or the assistance in any act involving the determination, preparation, administration or monitoring of any drug used in the administration of anesthesia or related services for surgical and other therapeutic procedures which require the presence of persons educated in the administration of anesthetics.

(2) A nurse anesthetist is required to have prescriptive authority.

(3) A nurse anesthetist is authorized to perform procedures delineated in the American association of nurse anesthetists guidelines for nurse anesthesia practice. Copies of the guidelines may be obtained from the American association of nurse anesthetists, 216 Higgins Road, Park Ridge, Illinois 60068, (708) 692-7050 www.aana.com.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: Section 37-8-202, MCA, gives the Board the authority to "define the educational requirements and other qualifications

applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute. The Board proposed the rule amendment because of a meeting between the Boards of Nursing and Pharmacy. The Board of Pharmacy believes that when an anesthetist performs anesthesia, s/he is prescribing an anesthetic. Because the nurse anesthetist is prescribing, the CRNA must have prescriptive privileges for the Board of Nursing to assure the public safety. Prescribing involves choosing the appropriate drug for the individual patient, determining the therapeutic dose, administering the drug, and being alert for complications or adverse reactions while the patient is under the influence of the drug. Additionally, many CRNAs practice in areas other than anesthesia, such as pain control. The current rule for CRNAs makes prescriptive authority optional. Approximately 20% of all CRNAs have prescriptive privileges in Montana. For the last two years, the Board encouraged all CRNAs to apply for prescriptive privileges voluntarily. The rule will affect all CRNAs and future CRNAs in Montana. Currently, Montana has 141 CRNAs, and approximately 116 of them will need to apply for prescriptive authority when the rule is adopted. The Board will allow a period of nine months for those who do not have prescriptive authority to apply and receive approval.

8.32.307 CLINICAL NURSE SPECIALIST PRACTICE (1) Clinical nurse specialist practice means the interdependent and collaborative delivery and management of expert level nursing care to individuals or groups, including the ability to:

(a) assess the health status of individuals and families using methods appropriate to the client population and area of practice;

(b) diagnose human responses to actual or potential health problems using the nursing process;

(c) plan for health promotion, disease prevention and/or therapeutic intervention in collaboration with the client. The goal is to enhance the problem-solving and self-care abilities of the client whenever and to whatever extent possible. The clinical nurse specialist works with other health care providers to maximize resources available to the client and family;

(d) implement therapeutic interventions based on the clinical nurse specialist's area(s) of expertise, including, but not limited to:

(i) direct nursing care, performing;

(ii) ordering durable medical equipment;

(iii) ordering non-pharmacological treatment;

(iv) providing medications or treatments according to protocol;

(v) receiving and interpreting monitoring diagnostic procedures according to protocols; and

(vi) counseling and/or teaching;

(e) refer for additional health care as necessary and appropriate;

(f) coordinate health care as necessary and appropriate;

- (g) evaluate, with the client, the effectiveness of care;
- (h) educate clients, families, other health care professionals and the public;
- (i) engage in research activities; and
- (j) provide consultation to other health care providers.
- (2) For the psychiatric clinical nurse specialist certified before July 1, 2005, the practice of that clinical nurse specialist also includes the independent, interdependent, and collaborative practice of psychiatric nursing and management of expert level psychiatric nursing care to individuals or groups of individuals. The practice requires the integration of clinical knowledge with clinical practice, and may include pharmacological management.

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: Section 37-8-202, MCA, gives the Board the authority to "define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute. The Board has been criticized for not clearly defining scopes of practice. Since the establishment of the clinical nurse specialist role in Montana, the profession has changed. The Board is proposing this rule change to define the Clinical Nurse Specialist practice. The rule also matches the educational and clinical preparation to the limits of licensure. Because the psychiatric Clinical Nurse Specialist has educational and clinical preparation to diagnose and treat medical conditions, the scope of that practice has been separated from the other clinical nurse specialists. There are currently 28 clinical nurse specialists, and 16 of them are psychiatric clinical nurse specialists. None of the non-psychiatric clinical nurse specialists have prescriptive authority, and this is not expected to impact the non-psychiatric clinical nurse specialist practice. The rule will affect those APRNs who choose to practice in the area of psychiatry. After July 1, 2005, those individuals will need to obtain certification as a psychiatric nurse practitioner if they choose to practice independently and prescribe medications.

8.32.411 RENEWALS (1) In November of each even-numbered year, the board of nursing shall mail an application for renewal of license to all persons currently licensed registered nurses and licensed practical nurses. The licensee must fill out the application and return it to the board BEFORE January 1 of the next year, together with the renewal fee. Upon receiving the renewal application and fee, the board shall issue a certificate of renewal for the current year beginning January 1 of the odd-numbered year, and expiring December 31 of the even-numbered year. If the renewal application is postmarked subsequent to December 31 of the renewal year, it is subject to a late fee of two times the renewal fee.

(2) A license shall be renewed by January 1 of the odd-

numbered years. Any person practicing nursing during the time a license has elapsed shall be considered an unlicensed person illegal practitioner and may be subjected to the penalties provided for violators under the provisions of this chapter.

(3) In November of even-numbered years, the board shall mail an application for renewal of license to all currently licensed advanced practice registered nurses (APRNs). The licensee shall complete the application and return it, the proof of continuing education required by ARM 8.32.411, and the renewal fee to the board before January 1. Upon receiving the completed renewal application and fee, the board shall issue a certificate of renewal for the current two-year period beginning January 1 and expiring December 31. If the renewal application is postmarked subsequent to December 31, it is subject to a late fee of two times the renewal fee. Any person practicing during the time a license has lapsed shall be considered an illegal practitioner and may be subject to the penalties provided for violators under the provisions of this chapter.

(a) The renewal application includes a declaration made under penalty of perjury of the laws of Montana. The declaration must include:

(i) a description of how the individual will implement the plan of quality assurance, including identification of the reviewer(s);

(ii) an acknowledgement of the scope of the individual's practice;

(iii) a description of the continuing education units earned or applicable to the renewal period;

(iv) the location of practice site(s); and

(v) the individual's current DEA registration number, if applicable.

(4) All APRNs shall complete 20 continuing education units per year, or 40 units per renewal period, pertaining to the areas of the individual's certification. APRNs who practice in a subspecialty setting shall complete the majority of the required continuing education credits in the area of the individual's subspecialty.

AUTH: 37-1-131, 37-8-202, MCA

IMP: 37-1-134, 37-8-202, 37-8-431, MCA

REASON: Section 37-8-202, MCA, gives the Board the authority to "define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute.

The change in (1) is necessary to differentiate between registered and licensed practical nurses and the advanced practice registered nurses. The latter must meet different renewal requirements. This change is a clarification of language and will not affect any licensees. The proposed language will change licensure renewals to every other year. This is a request of many licensees for the sake of convenience.

Section 37-8-431, MCA, defines license renewals and the change in (2) is necessary because hearing examiners have asked the Board to differentiate among:

- licensees who continue to practice when they have not renewed their licenses,
- individuals who are licensed in another state and never apply for a Montana license but work in Montana, and
- individuals who have never been educated as a nurse but hold themselves out to the public as a nurse.

This change affects all nurses who do not renew their licenses on time.

New subsection (3) is necessary to streamline the current quality assurance process for APRNs. This change will require a declaration made under penalty of perjury to assure the licensure requirements are met, but it will eliminate some of the paperwork that currently passes between the licensee and the Board office. This change brings a reduction in paperwork for both licensees and the Board office. The change also facilitates the ability of this category of licensee to renew on line. Previously, only RNs and LPNs could renew on line because the APRNs needed to submit hard copy documents to the Board office. Many APRNs requested this change so that they could participate in on-line renewals. This rule affects all 538 advanced practice registered nurses.

Section 37-1-306, MCA, allows the Board to "require licensees to participate in flexible, cost-effective, and geographically accessible continuing education." The new (4) is the Board's way of insuring that all advanced practice registered nurses maintain a level of competency by completing continuing education in their area of certification. This rule affects all 538 advanced practice registered nurses.

8.32.425 FEES (1) through (3) Remain the same.

(4) The application fee for specialty area recognition (APRN) ~~shall be \$50~~ is \$75, and a fee of ~~\$25~~ \$50 for each annual renewal period thereafter.

(5) The license (RN or LPN) renewal fee is ~~\$50~~ \$100 per year renewal period.

(6) The fee to reactivate a license (RN or LPN) is ~~\$50~~ \$100.

(7) Remains the same.

(8) The prescriptive authority application fee is ~~\$75~~ \$100.

(9) The renewal fee for prescriptive authority is ~~\$50~~ \$75 per renewal period.

(10) and (11) Remain the same.

(12) The fee for inactive RN or LPN status is ~~\$20~~ \$20 per year or \$40 per renewal period.

(13) The fee for the board resending a ~~duplicate~~ renewal application is \$20.

(14) and (15) Remain the same.

(16) The fee for inactive APRN status is \$30 per renewal

period.

AUTH: 37-1-319, 37-8-202, MCA
IMP: 37-1-134, 37-8-202, and 37-8-431, MCA

REASON: Section 37-1-134, MCA, requires that the Board set fees commensurate with costs. The rule will implement Section 37-8-431, MCA, which allows the Board to set fees. The apparent 100% increase in various renewal fees for RNs, LPNs and specialty practice recognition is not a fee increase, but rather a reflection of collecting the same fee for a two-year license, rather than an annual license. Accordingly, there is no economic impact as a result of the renewal fee amendments.

Section 37-1-319, MCA, allows the Board to establish rules for inactive status. A fee increase for both initial and renewal of prescriptive authority will support the increased workload on the part of the staff. Because the process is changing, the Board office staff will be reviewing most of the information, and the Committee will review very little. Approximately 30 nurses per renewal cycle are expected to apply for, or renew their prescriptive authority. The \$25 increase in the application fee is offset by the lowered renewal fee of \$75 for a two-year period. (Application fee of \$100 plus \$75 for a two-year renewal equals \$175, the same as the former \$75 application fee and two annual renewals of \$50 each.) The fees have not changed since they were initiated in 1994.

The fee for the inactive APRN status is a new fee which is anticipated to affect 10 to 13 APRNs per renewal period. Assuming that an APRN would elect to become inactive for a renewal period, rather than maintaining full licensure, that results in a savings of \$20 over the two-year period for the APRN status. The estimated economic impact of the proposed fee is a decrease of \$200 to \$260 revenue for the Board over a two-year period. The Board notes that because a nurse is inactive as an APRN, that does not necessarily mean that the nurse will also be inactive as an RN, too.

8.32.1503 PRESCRIPTIVE AUTHORITY ADVANCED PRACTICE NURSING COMMITTEE (1) ~~There will be a prescriptive authority is an advanced practice nursing committee. The committee is composed of at least three members of the board of nursing, two of whom will shall be RNs.~~

~~(a) The committee may retain consultants as necessary.
(b) The committee members will select a chairman.
(c) Meetings will be conducted according to Roberts Rules of Order. Minutes will be recorded and maintained by the board of nursing.~~

~~(d) Meetings will be conducted in a fashion which protects the applicants' constitutional right to privacy.~~

(2) The committee or its designee will review all applications for prescriptive authority and will recommend action to the board of nursing. and approve complete, typed or

word processed applications from individuals seeking advanced practice and/or prescriptive authority. The committee will recommend action to the full board of nursing. The application must describe the individual's proposed:

- (a) referral process;
- (b) scope of practice;
- (c) method of documentation;
- (d) method of quality assurance; and
- (e) modifications, if any, with regards to advanced practice and/or prescriptive authority.

~~(3) The committee will review the referral process, method of documentation, quality assurance, and any modifications. all non-routine, complete, typed or word processed applications for advanced practice licensure and will recommend action to the full board of nursing.~~

~~(4) The committee will review all complaints charging inappropriate use of prescriptive authority and will recommend action to the board of nursing.~~

~~(5) The committee's recommendations may be adopted or rejected by the board of nursing.~~

~~(a) If the recommendation is adopted by the board of nursing, the board will use the advisory committee's findings and recommendations in determining appropriate action, in accordance with ARM 8.32.1509.~~

~~(b) If the recommendation is rejected by the board of nursing, the reasons for rejection will be given in writing to the committee.~~

AUTH: 37-8-202, MCA
IMP: 37-8-202, MCA

REASON: Section 37-8-202(5)(a), MCA, gives the Board the authority to make rules to administer the program. The rule is implementing the same statute. The change in (1) is necessary because the Committee would like more members to assist in the evaluation of applications. The Board of Nursing plans to ask the next legislative session to increase the Board membership to 11 members. At that time, one additional member would be available for the prescriptive authority committee. The Board wants to change the prescriptive authority committee to the APRN Committee so that one committee handles all APRN issues. Section 2 is not necessary since it appears in general board rules. The Board's Screening Committee addresses section (5). Section (6) is redundant; Subchapter 6, Board of Nursing Organization covers these rules.

8.32.1504 INITIAL APPLICATION REQUIREMENTS FOR PRESCRIPTIVE AUTHORITY (1) The advanced practice registered nurse ~~will~~ shall submit a completed application provided by the board of nursing, and a non-refundable fee. The application ~~will~~ must include:

- (a) evidence of completion of a minimum of 15 ~~continuing~~ education hours in pharmacology and/or the clinical management of drug therapy from an accredited body which has have been

obtained within a three-year period immediately prior to the date the application is received at the board office. ~~The majority of the course work must~~ No more than two hours may concern the study of ~~pharmaceutical medications and not herbal or complementary~~ therapies. ~~This requirement is in addition to the education necessary for an advanced practice registered nurse to obtain original certification.~~ Six of the 15 continuing education hours must have been obtained within one year immediately prior to the date the application is received at the board office. One-third of all ~~continuing~~ education hours must be face-to-face meetings or interaction.;

(b) a copy of the original certification document from the advanced practice registered nurse's certifying body.;

(c) a brief description of the proposed practice, including proposed sites.;

(d) a description of the method of referral and documentation in client records, in accordance with ARM 8.32.1507.;

(e) a description of the method of quality assurance used to evaluate the advanced practice registered nurse, in accordance with ARM 8.32.1508.

(2) The committee will make a recommendation only with respect to completed, typed or word processed applications. The board of nursing may deny or delay the application if the applicant has a license which is encumbered. ~~on one or more of the following grounds:~~

~~(a) the applicant is not recognized as an advanced practice registered nurse,~~

~~(b) the applicant submitted an incomplete application,~~

~~(c) the applicant has not met the requirements contained in (1)(a),~~

~~(d) the applicant's license has been impaired by or is under investigation for disciplinary action,~~

~~(e) the applicant is a party to legal action related to the propriety of his or her practice or fitness to practice.~~

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: Section 37-8-202(5)(a), MCA, gives the Board the authority to "define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute. Additionally, Section 37-1-306, MCA, gives the Board the power to require continuing education. The changes are necessary to define the requirements for prescriptive authority. The changes will expedite the process since they will outline the application requirements, making the Committee's work and issuance of applications more efficient.

8.32.1508 QUALITY ASSURANCE OF ADVANCED PRACTICE REGISTERED NURSE PRACTICE (1) An advanced practice registered nurse with prescriptive authority will performing direct patient care shall submit a method of quality assurance for evaluation

of the advanced practice registered nurse's practice. The quality assurance method must be approved by the board of nursing prior to ~~issuance of prescriptive authority licensure.~~

(2) The quality assurance method ~~will~~ must include the following elements:

(a) ~~30~~ 15 charts or 5% of all charts handled by the advanced practice nurse, whichever is less, must be reviewed quarterly. ~~Review shall be accomplished through the use of a mixture of peer review and review by a physician of the same specialty, as appropriate. The charts being reviewed must be evaluated by a peer review, by a physician of the same practice specialty, or by others as approved by the board. Each evaluator shall hold an unencumbered license;~~

(b) use of standards which apply to the advanced practice registered nurse's area of practice;~~;~~

(c) concurrent or retrospective review of the practice;~~;~~

(d) use of pre-established patient outcome criteria specific to the APRN's specific patient population;~~;~~ and

(e) written evaluation of review with steps for corrective action if indicated and follow-up.

(3) An advanced practice registered nurse ~~will~~ shall immediately file with the board of nursing any proposed change in the quality assurance method. Any change ~~will be~~ is subject to prior approval by the board of nursing.

(4) Proof of quality assurance reviews must be maintained by the licensee for five years.

AUTH: 37-8-202, MCA

IMP: 37-8-202, MCA

REASON: Section 37-8-202(5)(a), MCA, gives the Board the authority to "define the educational requirements and other qualifications applicable to recognition of advanced practice registered nurses." The rule is implementing the same statute. This rule has been changed to reflect the change in requirements for all APRN practice. In the past, only those APRNs with prescriptive privileges were required to perform quality assurance. The new language will require that all APRNs in direct practice perform quality assurance. The Board believes this is one way to assure the public's safety. The rule will affect all 213 APRNs who currently do not engage in a quality assurance program.

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

Jill Caldwell
Board of Nursing
Department of Labor and Industry
P.O. Box 200513
Helena, Montana 59620-0513

or by e-mail to dlibsdnur@state.mt.us, and must be received by no later than 5:00 p.m., July 11, 2002. Comments may also be submitted electronically as noted in the following paragraph.

5. An electronic copy of this Notice of Public Hearing is available through the Department's and Board's site on the World Wide Web at http://www.discoveringmontana.com.dli/bsd/license/bsd_boards/nur_board/rules.htm. The Board strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered.

6. The Board of Nursing maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this agency. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding any specific topic or topics over which the Board has rule-making authority. Such written request may be delivered to Mark Cadwallader, 1327 Lockey St., room 412, Helena, Montana, mailed to Mark Cadwallader, P.O. Box 1728, Helena, MT 59624-1728, faxed to the office at (406) 444-1394, e-mailed to mcadwallader@state.mt.us, or made by completing a request form at any rules hearing held by the Department.

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

8. Darcee Moe has been designated to preside over and conduct the hearing.

BOARD OF NURSING
JACK BURKE, RN, Chair

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY KEATING
Wendy Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 3, 2002.

BEFORE THE BUILDING CODES BUREAU
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed) NOTICE OF PUBLIC HEARING
adoption of new rules I) ON PROPOSED ADOPTION
through VIII, pertaining to)
building codes)

TO: All Concerned Persons

1. On July 23, 2002, at 10:00 a.m., a public hearing will be held in the Fourth Floor Conference Room, 301 South Park, Helena, Montana, to consider the proposed adoption of the above-stated new rules.

2. The Department of Labor and Industry will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Department no later than 5:00 p.m., July 19, 2002, to advise us of the nature of the accommodation that you need. Please contact Kat McKay, Department of Labor and Industry, Building Codes Bureau, (Fourth Floor, 301 South Park), P.O. Box 200517, Helena, Montana 59620-0517; telephone (406)841-2040; Montana Relay 1-800-253-4091; TDD (406)444-0532; facsimile (406)841-2050.

3. GENERAL REASONS APPLICABLE TO ALL NEW RULES: The reason for the proposed rules is the following statutory mandate found in 50-60-203(1)(a), MCA: "The department shall adopt rules relating to the construction of, the installation of equipment in, and the standards for materials to be used in all buildings or classes of buildings . . ."

The Uniform Building Code (UBC) and the CABO One and Two Family Dwelling Code (CABO) have been utilized for the past 30 years as the primary nationally recognized codes, as referenced in 50-60-203(2), MCA, upon which the state building code was based. New updated editions to these two codes were published every three years. Montana adopted the new editions as they were published.

The UBC and CABO are no longer being published. The 1997 edition of the UBC and the 1995 edition of the CABO, the current editions adopted by the Department, are the last edition of these two codes to be published. New technology is not being addressed. Training, testing and certification for inspectors is being phased out and in the near future will be unavailable. The Department must adopt replacement codes that will have the full support of its publisher to keep current with new construction technology and provide other administrative services such as training and certification.

The publishers of the UBC and the CABO have developed and published, as the designated replacement codes, the International Building Code (IBC), 2000 edition, and the

International Residential Code (IRC), 2000 edition. These two new codes are the result of the collaboration of the three major building code publishers in the United States: Building Officials and Code Administrators International, publishers of the BOCA National Codes; the Southern Building Code Congress International, the publishers of the Standard Codes; and the International Conference of Building Officials, publishers of the Uniform Codes. The International codes are published and in print. They have full administrative support providing training, testing and certification of inspectors. They are keeping current with the latest building technology, with new editions being scheduled every three years.

An alternative to adopting the IBC and IRC is to adopt the National Fire Protection Association's NFPA 5000 Building Code. The NFPA 5000 Building Code is not scheduled for publication until 2003.

The suitability of the IBC and IRC as the basic codes for the state building code has been researched by the professional staff of the Building Codes Bureau for several years. In April 2000, a series of seminars and public input sessions were held in Billings, Helena and Missoula on the IBC and IRC. The Building Codes Council has been reviewing the International Codes since May 2000. Building Codes Bureau staff, the response from the public input sessions, the Building Codes Council, and the local governments enforcing building codes have all been in favor of the adoption of the IBC and IRC as the basis for the state building code rather than the NFPA 5000 Building code.

The IBC and IRC meet the purposes of the state building code, as provided in 50-60-201(1) through (3), MCA: "The state building code must be designed to effectuate . . . the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consistent with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements that tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient use of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements that tend to unnecessarily increase construction costs, unnecessarily prevent the use of proven new materials that have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction."

The IBC and IRC do present some changes in approach to construction standards and design. A certain amount of time will be required for those involved in the construction industry to learn the new codes. Thus, the Department is proposing a

phase-in period during which the existing code and the new codes will both provide acceptable standards.

Over the years, the state has developed amendments to the existing code to address the unique relationship between the state and local government programs, the need for cross referencing of the plumbing, mechanical and electrical codes also adopted by the state, and the special environmental and economic considerations needed for doing business in Montana. Although the proposed rules are all labeled new rules, most are restatements of the current amendments and do not present new proposals. The overall objective of the Department in adopting the IBC and IRC is to continue, as much as possible, with most of the current specialized code amendments to the UBC and CABO which have been developed to address Montana conditions and laws.

4. The Department proposes to adopt new rules as follows:

NEW RULE I INCORPORATION BY REFERENCE OF INTERNATIONAL BUILDING CODE

(1) The department of labor and industry, referred to as the department in this rule and all subsequent rules in ARM Title 24, chapter 301, adopts and incorporates by reference herein the International Building Code, 2000 Edition, referred to as the International Building Code or IBC, unless another edition is specifically stated, together with the following appendix chapters:

(a) Appendix Chapter C (Group U - Agricultural Buildings);
and

(b) Appendix Chapter J (Supplementary Accessibility Requirements for Qualified Historic Buildings and Facilities).

(2) The IBC is a nationally recognized model code setting forth minimum standards and requirements for building design, construction, alteration and repair. The IBC also provides a framework for program administration.

(3) A copy of the International Building Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by contacting the International Conference of Building Officials, 5360 Workman Mill Road, Whittier, California 90601-2298.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASON: There is reasonable necessity for the Department to adopt the International Building Code, 2000 edition, because the currently adopted Uniform Building Code, 1997 edition, is no longer being administratively supported or being updated by its publishers. The International Building Code is being proposed as the primary code for the state building code because it is the designated successor code to the Uniform Building Code, is the choice of the Building Code Council and is supported by local government building officials.

NEW RULE II OPTIONAL APPENDIX CHAPTERS FOR LOCAL GOVERNMENT ADOPTION (1) The following appendix chapters of the International Building Code are adopted for use by local governments, in part or in whole, if the local government has specifically provided for their adoption. These appendix chapters are not adopted for use by the department:

- (a) Appendix Chapter B (Board of Appeals); and
- (b) Appendix Chapter H (Signs).

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASON: The Department proposes to adopt these two Appendix Chapters for optional use by local governments because they provide appropriate standards for boards of appeal as required by 50-60-303, MCA, and for signs. The Department appeal procedures are addressed by 50-60-206, MCA. Sign regulations in the mostly rural areas covered by the Department's program are not necessary. The variability between jurisdictions on these two limited subjects would not interfere with the general goal of state-wide uniformity.

NEW RULE III CALCULATION OF FEES (1) IBC Section 108.2, Schedule of Permit Fees, is modified for use by the department with the following additions:

(a) Permit fees. The fee for each permit is established in Table 108.2.

(b) Plan review fees. When submittal documents are required, a plan review fee must be paid in addition to the permit fee. The plan review fee is 35% of the building permit fee as established in Table 108.2. If only plan review services are provided, the plan review fee for such services shall be 50% of the combined plan review and building permit fee.

(c) Add a new paragraph to IBC section 108.2 to read: "Requested Inspection Fee - \$45, provided that such service is not in excess of one hour in duration, and then \$25 for each 30 minutes or fractional part thereof in excess of one hour. Travel and per diem will be charged as per the state of Montana's existing rates for these items."

(2) A minimum 50% of the combined building permit fee and the plan review fee must be paid before a building permit application is reviewed beyond the initial screening. Both the building permit fee and the plan review fee must be paid before a building permit will be issued.

(3) The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees is the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

(4) The value or valuation of a building or structure under any of the provisions of the International Building Code will be determined using one of the following methods of

determining valuation, listed in their order of priority:

- (a) Firm bids or contract amounts, if available;
- (b) The design professional's preliminary cost estimate, if such estimate is available; or
- (c) The cost per square foot method of valuation and the cost per square foot figures, modified by region, for the type and quality of construction listed in the "Building Valuation Data" table of the March/April 2002 edition of "International Conference of Building Officials Building Standards" magazine, published by the international conference of building officials.
- (d) When in unusual circumstances the valuation calculated by the use of the "Building Valuation Data" table, the design professional's estimated project cost, firm bids or contract amounts are determined to be unreasonable for the nature of the project, the department reserves the right to base the building permit fee and plan review fee on the best valuation information it has available to it.
- (5) For purposes of calculation of fees, the building valuation shall be rounded off to the nearest \$1,000 and any calculated building and plan review fees shall be rounded off to the nearest \$1.
- (6) As provided in ARM 24.301.203, local governments certified to enforce the state building code may establish their own permit fees. Local governments may also establish their own method of building valuation.
- (7) For projects involving replacement of existing building components, such as roof coverings and windows, the department may use the requested inspection fee rate in calculating and assessing an appropriate and reasonable fee for projects in which such factors as material costs cause the plan review/building permit fee to exceed the cost of the service the department provides.
- (8) For the period between July 1, 2000, and December 31, 2002, both the building permit fee and plan review fees shall be reduced by 35%. Upon written application to the department, on forms which may be prescribed by the department, a refund of the 35% reduction shall be given to the person or persons who paid the fee or fees to the department during this period and was not reduced by 35%.
- (9) The "International Conference of Building Officials Building Standards" is published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.
- (10) A copy of the "Building Valuation Data" table may be obtained free of charge from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, Montana 59620.

TABLE 108.2
BUILDING PERMIT FEES

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$23.50
\$501.00 to \$2,000.00	\$23.50 for first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$391.75 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof to and including \$500,000.00
\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.15 for each additional \$1,000.00, or fraction thereof
Other Inspections and Fees:	
1. Inspections outside of normal business hours.....	\$45.00 per hour (minimum charge - two hours)
2. Reinspection fees assessed under provisions of Section 305.8.....	\$45.00 per hour
3. Inspections for which no fee is specifically indicated.....	\$45.00 per hour (minimum charge - one-half hour)
4. Additional plan review required by changes, additions or revisions to plans.....	\$45.00 per hour (minimum charge - one-half hour)
5. For use of outside consultants for plan checking and inspections, or both.....	Actual costs ¹

¹ Actual costs include administrative and overhead costs.

AUTH: 50-60-104 and 50-60-203, MCA
IMP: 50-60-104 and 50-60-203, MCA

REASON: This proposed rule is analogous to ARM 24.301.104, 24.301.105 and 24.301.106. Section 50-60-104, MCA, provides that the Department shall establish a schedule of fees. The proposed rule maintains the current fee calculation system, including the 35% temporary discount. The rule also provides the public with addresses of the sources from which referenced publications may be obtained.

NEW RULE IV MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE ONLY TO THE DEPARTMENT'S CODE ENFORCEMENT PROGRAM (1) The following modifications to the International Building Code are applicable only to the department's building code enforcement program. The referenced sections remain without amendment for local government building code enforcement programs.

(2) The department will use 50-60-109 and 50-60-110, MCA, in cases requiring prosecution in lieu of section 113 of the International Building Code. When a person fails to submit required plans, obtain a permit, correct plans or comply with an order of the department, the department, as authorized by 50-60-109, MCA, may bring civil action to enjoin the person from constructing or using the building.

(3) No plumbing, mechanical or electrical permit will be issued for a building or structure under the jurisdiction of the department, until:

- (a) the building permit has been issued;
- (b) it has been determined that a building permit is not required; or
- (c) special circumstances exist which make issuance of the permit appropriate.

(4) An owner seeking to do work that the owner believes is not subject to a building code requirement shall provide the department, if in the state's jurisdiction, with any documentation or information that it may reasonably require so that the department may determine whether the work is subject to the building code requirement. The documentation or information provided may be required to be in the form of an affidavit or affirmation.

(5) Subsection 106.1 of the International Building Code is amended with the addition of the following: "The department requires submittal of two complete sets of construction documents for all projects. This section shall not be construed to require an architect or engineer license. The requirements for who must be licensed to practice architecture or engineering work is governed by Title 37, chapter 65, MCA and Title 37, chapter 67, MCA. The issuance of a building permit does not in any way address the need for licensure by the permit holder or designer."

(6) Subsection 110.1 of the International Building Code is amended with the addition of the following: "On a case by case basis the building official or his agent may grant the owner permission to occupy and use a building or portions thereof prior to completion of the project when the building official or

his agent finds the building or structure to be in substantial compliance with the intent of the International Building Code."

(7) Subsection 110.3 of the International Building Code is amended to read:

(a) "110.3 Certificate of Occupancy issued. If the building official or his agent makes all the inspections of a the building or structure required by section 109, and finds it was constructed in accordance with the provisions of the state building code, the building official shall issue a certificate of occupancy, as referenced in 50-60-107, MCA, which shall contain the following:

- (i) the building permit number;
- (ii) the address of the building;
- (iii) the name and address of the owner;
- (iv) a description of that portion of the building for which the certificate is issued;
- (v) a statement that the described portion of the building has been inspected and complies with the state building code for the group and division of occupancy and the use for which the proposed occupancy is classified;
- (vi) the name of the building official;
- (vii) the section of the code under which the permit was issued;
- (viii) the use and occupancy, in accordance with the provisions of Chapter 3;
- (ix) the type of construction as defined in Chapter 6;
- (x) the design occupant load;
- (xi) if an automatic sprinkler system is provided, whether the sprinkler system is required; and
- (xii) any special stipulations and conditions of the building permit."

(b) "Formal Written Approval: In situations where the department was unable to perform the required inspections referenced in section 109 of the International Building Code, but no significant deficiencies from the state building code have been noted, the bureau may issue a letter of formal written approval in lieu of a certificate of occupancy."

(8) The department will use the applicable provisions of the Montana Administrative Procedure Act in all cases of appeal in lieu of section 112 of the International Building Code.

(9) Subsection 1805.2.1 of the International Building Code requires that footings and foundations shall extend below the frost line. In all areas of the state outside of certified local government jurisdictions, the minimum depth from finished grade to the bottom of footings shall be 3.0 ft. for single story wood or metal frame buildings, and 4.0 ft. for multi-story or masonry buildings. Buildings located on highly expansive or unstable soils may need engineered footings and foundation walls that extend below the minimum depths indicated above. At the discretion of the building official, the above minimum depths may not be required for properly designed so-called monolithic slabs for single story storage and similar use buildings. The building official may require monolithic slabs to be designed and stamped or certified by a Montana registered engineer who

practices structural design. The design and stamp of a Montana licensed architect may be accepted in lieu of an engineer's stamp when the monolithic slab design is an incidental part of an architectural building design, as allowed by 37-67-103, MCA.

AUTH: 50-60-203, MCA

IMP: 50-60-107, 50-60-108, 50-60-109, 50-60-203 and 50-60-212, MCA

REASON: The purpose of this rule is to maintain consistency with past practices in how the Department administers its program. This proposed rule is analogous to current rules as follows:

New Rule IV(2):	24.301.107(3)
New Rule IV(3):	24.301.107(4)
New Rule IV(4):	24.301.107(10)
New Rule IV(7):	24.301.107(9), as per MAR Notice No. 24-301-150
New Rule IV(8):	24.301.107(2)
New Rule IV(9):	24.301.107(6)

New Rule IV(5) and (6) have no equivalent in current rule. However, slightly different provisions in the IBC from the UBC require these two proposals to maintain consistency with current Department practices. New Rule IV(5) requires two sets of plans so that the field inspector has a working copy and the second copy can be kept in the permanent agency files. Recognizing the seasonal limitations for construction in Montana and the economic benefit to the owner, New Rule IV(6) recognizes the established practice of the Department allowing partial occupancy before final inspection if it can be safely accomplished.

NEW RULE V MODIFICATIONS TO THE INTERNATIONAL BUILDING CODE APPLICABLE TO BOTH THE DEPARTMENT'S AND LOCAL GOVERNMENT CODE ENFORCEMENT PROGRAMS (1) The following modifications to the International Building Code are applicable to both the department's building code enforcement program and local government building code enforcement programs.

(2) Subsection 101.4, Referenced codes, is modified by adding the following: "Any reference to a separate specialty code, by title, either in this subsection or elsewhere in this code, shall be considered deleted and replaced with the title of the model code adopted and in effect at the time, as applicable."

(3) Subsection 101.4.1, Electrical, is modified by deleting "ICC Electrical Code" and replacing with "National Electrical Code."

(4) Subsection 101.4.2, Gas, is modified by deleting "International Fuel Gas Code" and replacing with "Uniform Mechanical Code (ICBO version)."

(5) Subsection 101.4.3, Mechanical, is modified by deleting "International Mechanical Code" and replacing with "Uniform Mechanical Code (ICBO version)."

(6) Subsection 101.4.4, Plumbing, is modified by:

(a) Deleting "International Plumbing Code" and replacing with "Uniform Plumbing Code."

(b) Deleting the last sentence: "The provisions of the International Private Sewage Disposal Code shall apply to private sewage disposal systems."

(7) Subsection 101.4.5, Property maintenance, is deleted in its entirety.

(8) Subsection 101.4.6, Fire prevention, is modified by deleting "International Fire Code" and replacing with "fire code adopted by the Fire Prevention and Investigation Bureau of the Department of Justice."

(9) Subsection 101.4.7, Energy, is modified by deleting "International Energy Conservation Code" and replacing with "Model Energy Code."

(10) Subsection 105.1.1 is deleted and replaced with the following: "At the discretion of the building official, a single annual permit may be issued for multiple buildings owned by a single entity, located in a single geographic location, which require similar and repetitive repair, restoration and maintenance work."

(11) Subsection 106.3.1 is amended by the addition of the following sentence: "When the building official issues the permit where plans are required, the building official shall approve the construction documents, with corrections as required, or with adequate written resolution of deficiencies noted in plan review comments."

(12) Subsection 307.9, Exceptions (11), is modified by adding the following: "Ventilation shall be provided in an approved manner in battery-charging areas to prevent a dangerous accumulation of flammable gases. Ventilation shall be provided for stationary lead-acid battery systems and shall be designed to limit the maximum concentration of hydrogen to 1.0 percent of the total volume of the room. Continuous ventilation shall be provided at a rate of not less than 1 cubic foot per minute per square foot of floor area of the room."

(13) The following modifications apply to riding arenas:

(a) Subsection 312.1 is amended by addition of the following paragraph: "Riding arenas limited to occupant loads of 200 or less and used for boarding, breeding and training of horses, horse shows and competitions, clinics and rider instruction and open riding are considered agricultural buildings subject to the provisions of Appendix Chapter C, as amended. Uses such as rodeos, barn dances, craft and other non-livestock shows, conventions and similar events which result in large numbers of spectators or occupants are not allowed in riding arenas classified as agricultural buildings."

(b) Appendix Chapter C, subsection C101.1 is amended by addition of: "9. Riding arenas as defined in amended subsection 312.1."

(c) Appendix Chapter C, subsection C104.1 is amended by addition of the following sentences to exception 2: "The portion of riding arena buildings where riding will occur or where spectators may be present or seating is provided shall be

provided with a minimum of four exits directly to the outside, with the exits located in a manner acceptable to the department that enhances exit from spectator areas. Exits from this portion of the building shall not be provided with a latch or lock unless it is panic hardware."

(d) Appendix Chapter C, subsection C104.1 is amended by addition of exception 3: "Exit doors for riding arenas shall not be less than 3 feet by 6 feet 8 inches."

(14) Subsection 406.4.2, Ventilation, is modified by adding the following: "Mechanical ventilation systems for enclosed parking garages are not required to operate continuously where the system is arranged to operate automatically upon detection of a concentration of carbon monoxide of 25 parts per million by approved automatic detection devices. Automatic operation of the system shall not reduce the ventilation below 5 cubic feet per minute per person and the system shall be capable of producing a ventilation rate of 1.5 cubic feet per minute per square foot of floor area. Connecting offices, waiting rooms, ticket booths and similar uses that are accessory to a public garage shall be maintained at a positive pressure to outside and shall be provided with ventilation in accordance with Table 406.4.2."

(15) Subsection 406.6.3, Ventilation, is modified by adding the following: "In areas where motor vehicles operate, mechanical ventilation shall be provided in accordance with Table 406.4.2. In areas where stationary motor vehicles are operated, a source capture system shall be provided that connects directly to the motor vehicle exhaust system. These requirements do not apply to electrically powered vehicles, one and two family dwelling garages or where motor vehicles are operated inside a building only for the duration necessary to move the motor vehicle in or out of the building. Where Class I liquids or LP-gas are stored or used within a repair garage having a basement or pit wherein flammable vapors could accumulate, the basement or pit shall be provided with ventilation designed to prevent the accumulation of flammable vapors therein."

(16) Subsection 409.3.1.2, Exhaust Air, is modified by adding the following: "Projectors equipped with an exhaust discharge shall be directly connected to a mechanical exhaust system that operates at an exhaust rate as indicated by the manufacturer's installation instructions. Projectors without an exhaust connection shall have contaminants exhausted through a mechanical exhaust system. The exhaust rate for electric arc projectors shall be a minimum of 200 cubic feet per minute per lamp. Xenon projector exhaust shall be at a rate of 300 cubic feet per minute per lamp with the exterior temperature of the lamp housing not to exceed 130 degrees F."

(17) Subsection 412.4.6, Ventilation, is modified by deleting in its entirety and replacing with the following: "Aircraft paint hangars shall be provided with ventilation as required by the mechanical code and the fire code."

(18) Footnote e, Table 415.3.1 is amended with the addition of the following sentence: "A magazine which is regulated by

the United States bureau of alcohol, tobacco and firearms, may be considered as in compliance with the International Building Code distance provisions if distances are determined by utilizing either Table 415.3.1 of the International Building Code or applicable table in the fire code, at the discretion of the building official."

(19) Subsection 416.3, Spraying spaces, is modified by deleting and replacing with the following: "Spraying spaces shall be ventilated with an exhaust system to prevent the accumulation of flammable mist or vapors in accordance with the mechanical code and the fire code. Where such spaces are not separately enclosed, noncombustible spray curtains shall be provided to restrict the spread of flammable vapors."

(20) Subsection 603.1(2) (Exception 10) is modified by deleting and replacing with the following: "Materials meeting the flame spread index and smoke-developed rating for use within ducts and plenums as established in the mechanical code."

(21) Subsection 716.5 (Exception 2) is modified by deleting and replacing with the following: "Materials meeting the flame spread index and smoke-developed rating for use within ducts and plenums as established in the mechanical code."

(22) In new or existing structures, the building official may allow the installation of non-code compliant equipment, facilities or structural elements including, but not limited to, fire-extinguishing (sprinkler) systems or fire-resistive construction, which are not required by the building code, upon the finding that such installation does not negatively impact the overall compliance of the structure with the building code. Subsection 901.2, Fire protection systems, is modified by deleting the Exception and replacing with the following: "Any fire protection system or portion thereof not required by this code shall be permitted to be installed for partial or complete protection at the discretion of the building official."

(23) Subsection 903.3.5, Inadequate Water Supply, is amended by addition of the following: "This subsection shall apply to buildings which are required by the International Building Code to be provided with an automatic fire extinguishing system and do not have access to an existing multiple user water supply system, such as a municipal water supply system or a private community water supply system, capable of providing the water supply requirements of National Fire Protection Association Standard for the Installation of Sprinkler Systems, 1999 edition (NFPA 13). Under such circumstances, water storage requirements may be modified by the building official. The modified design shall include sufficient storage on site to operate 50% of the hydraulically remote area for the response time of the local fire department. This reduction shall not reduce the number of operating sprinklers to less than four. Response time is the time from alarm to the time the fire department can apply water to the fire. Response time shall be established by the use of the formula $T = 0.65 + 1.7D$, where T is response time, in minutes, and D is distance, in miles, from the fire station to the building. The modified water supply shall be sufficient to operate the system for the

response time calculated above but not be less than 20 minutes. Water supply requirements shall be established by using the area/density method as defined in NFPA 13. A 50% reduction in water storage is allowed. Density shall not be modified. All automatic fire sprinkler system designs and components shall be in storage for 50% of the sprinkler discharge requirements in compliance with NFPA 13. When a modified water storage is allowed, the automatic fire sprinkler system must be equipped with a flow alarm, digital alarm communicator transmitter and a fire department connection. The automatic fire sprinkler system shall be monitored by an approved central station in accordance with NFPA 72, National Fire Alarm Code, 1999 edition."

(24) The standards for fire-extinguishing systems and standpipe systems referenced in Chapter 9 of the International Building Code shall be the following unamended National Fire Protection Association (NFPA) Standards:

(a) Fire-extinguishing system.

(i) Installation of Sprinkler Systems: NFPA 13 Standard for the Installation of Sprinkler Systems, 1999 edition.

(ii) Installation of Sprinkler Systems in Group R Occupancies Four Stories or Less: NFPA 13R Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and Including Four Stories in Height, 1999 edition.

(b) Standpipe Systems: NFPA 14 Standard for the Installation of Standpipe and Hose Systems, 2000 edition.

(c) Notwithstanding any other provisions or references to the contrary within the NFPA standards, the authority having jurisdiction over any fire protection system required by Chapter 9 of the International Building Code shall be the building official.

(25) Subsection 908.6, Refrigerant detector, is modified by deleting and replacing with the following: "Machinery rooms shall contain a refrigerant detector with an audible and visual alarm. The detector, or a sampling tube that draws air to the detector, shall be located in an area where refrigerant from a leak will concentrate. The alarm shall be activated whenever the refrigerant vapor permissible exposure level (PEL) is exceeded as established by the mechanical code. Detectors and alarms shall be placed in approved locations. Exception: Detectors are not required in ammonia system machinery rooms equipped with a vapor detector in accordance with the mechanical code."

(26) Subsection 1004.3.2 is amended by addition of the following: "Upgrading of corridors in existing E occupancies serving an occupant load of 30 or more, may have walls and ceilings of not less than one-hour fire-resistive construction as required by this code. Existing walls surfaced with wood lathe and plaster in good condition or 1/2-inch gypsum wallboard or openings with fixed wired glass set in steel frames are permitted for corridor walls and ceilings and occupancy separations when approved. Doors opening into such corridors shall be protected by 20-minute fire assemblies or solid wood doors not less than 1 3/4 inches thick. Where the existing frame will not accommodate the 1 3/4-inch-thick door, a 1 3/8-

inch-thick solid bonded wood-core door or equivalent insulated steel door shall be permitted. Doors shall be self-closing or automatic closing by smoke detection. Transoms and openings other than doors from corridors to rooms shall comply with this code or shall be covered with a minimum of 3/4-inch plywood or 1/2-inch gypsum wallboard or equivalent material on the room side. Exception: Existing corridor walls, ceilings and opening protection not in compliance with the above may be continued when such buildings are protected with an approved automatic sprinkler system throughout. Such sprinkler system may be supplied from the domestic water system if it is of adequate volume and pressure."

(27) Subsection 1202.1, General, is modified by deleting and replacing with the following: "Buildings shall be provided with natural ventilation in accordance with subsection 1202.4 or shall be provided with mechanical ventilation in accordance with Table 406.4.2."

(28) Subsection 1202.4.2.1, Bathrooms, is modified by deleting and replacing with the following: "Rooms containing bathtubs, showers, spas and similar bathing fixtures shall be mechanically ventilated in accordance with Table 406.4.2."

(29) Subsection 1301.1.1 is modified by deleting and replacing with the following: "In order to comply with the purpose of this subsection, buildings shall be designed to comply with the requirements of the energy code as adopted in ARM 24.301.160."

(30) Subsection 1608.2 is deleted and replaced with the following: "Snow loads shall be determined by the building official. In areas of the state outside of certified local government jurisdictions, the design snow load shall be based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", authored by F.F. Videon and J.P. Schilke, Civil & Agricultural Engineering, Montana State University, August 1989. The minimum design roof snow load after allowed reductions shall be 30 psf. Note: Other coefficients and factors may be used when justified by a Montana licensed design professional to the satisfaction of the building official."

(31) Subsection 2902.1, Minimum number of fixtures, is modified by deleting and replacing with the following: "Plumbing fixtures shall be provided as established in ARM 24.301.303."

(32) Table 2902.1, MINIMUM NUMBER OF PLUMBING FIXTURES, is modified by deleting and replacing with ARM 24.301.303.

(33) Subsection 2902.6, Public facilities, is deleted in its entirety.

(34) Subsection 3004.3, Area of vents, is modified by adding the following: "When energy conservation requires that the vents be normally closed, automatic venting by actuation of an elevator lobby detector or power failure may be accepted. When hoistway pressurization is used, venting upon power failure may be accepted. In either case, a manual override shall be provided."

(35) Community residential facilities are subject to this rule as follows:

(a) As specified in 76-2-412(3), MCA, building codes which are not applicable to residential occupancies may not be applied to a community residential facility serving eight or fewer persons or to a day-care home serving 12 or fewer children.

(b) A community residential facility does not include a personal care facility as defined in 50-5-101, MCA, regardless of the number of persons for which the building is designed or for which it is licensed.

(c) A licensed adult foster care home, as defined in 50-60-101(3), MCA, which by definition is limited to four or fewer residents, is the equivalent to a licensed adult foster family care home referenced in 76-2-411, MCA, and is therefore a community residential facility. Within the jurisdictional area of a local government that is certified to enforce building codes for single family dwellings, a licensed adult foster care home will be classified as a Group R, Division 3 structure for building permit and construction standard purposes. Within the state's jurisdictional area a licensed adult foster care home will be treated as a residential building exempt from the state building code as provided in 50-60-102, MCA.

(36) The building official may waive minor building code violations that do not constitute an imminent threat to property or to the health, safety or welfare of any person.

(37) The building official may accept high quality, essentially defect-free, rough sawn lumber as being equal and an alternative to graded and stamped dimension lumber. The building official may require in-place installations of rough sawn lumber to be inspected and certified by a Montana licensed engineer or inspected and approved by a certified lumber grader.

(38) The building official may accept high quality log construction as being equal and an alternative to graded and stamped dimension lumber. Typically, 9 inch or greater nominal diameter log wall construction is considered to be equivalent to one-hour fire resistive construction provided the minimum dimension is 5 inches or more.

(39) A private garage is a building or a portion of a building in which only motor vehicles used by the tenants of the building or buildings on the premises are stored or kept. A building in which vehicles are repaired or stored as part of commercial enterprise or business, even if on the premises of a dwelling, is not a private garage.

(40) A private storage structure used only for the owner's own use is a building used for storage of personal effects of the owner and not used for storage of equipment, vehicles, materials, supplies or products used in a commercial enterprise or business.

(41) Aircraft hangars, even if for private use, are not exempt as private garages or private storage structures unless located on the same parcel of private property or lot as the owner's residence. Aircraft hangars that are used in conjunction with a commercial activity of any kind are not exempt as private garages or private storage structures regardless of location. Aircraft hangars, less than 3,000 square feet in size, that are used only for parking of an

aircraft and where no repair work or welding is performed and where no fuel is dispensed, will be classified as utility buildings (Group U).

(42) Upon the effective date of new requirements, administrative rules and/or adoption of new editions of model codes, any building or project for which a legal building permit has been issued shall not be required to meet the new requirements. If the building or project is subsequently altered or remodeled, the alteration or remodel shall be subject to the applicable requirements in effect at the time of permit issuance for the new work. On a case-by-case basis, the building official shall have the discretion to determine if the process for issuance of a legal permit was substantially complete enough to warrant the exemption of the project or building from the new requirements, rules or code provisions.

(43) The building official may require an applicant for a building permit to obtain, at the applicant's expense, an independent plan review from a plan review firm or agency acceptable to the building official. The independent plan review shall include, but is not limited to, a structural review for compliance with the requirements of the building code. The building official shall modify the plan review fee for projects which were required to obtain the independent plan review to be commensurate with the services provided by the agency in relation to the fee charged the applicant by the independent plan review firm or agency.

(44) Construction documents for public buildings, owned by the state and its political subdivisions as outlined by 18-2-122, MCA, shall bear the seal of a design professional. The building official may waive the requirements for a design professional seal for minor projects such as storage sheds and minor renovations, which do not have a direct bearing on the public health and safety. In addition, the requirement for the seal of a design professional may be waived for projects for which documentation has been submitted, including but not limited to, a letter from the attorney for the local jurisdiction where the project is located, which supports a conclusion that the scope of the project does not have the potential to have a direct bearing on public health and safety.

(45) The term "public building" as used in 18-2-122, MCA, refers only to the buildings owned by the state and its political subdivisions for the purposes of requiring a design professional's seal, and does not include privately owned buildings as included in the definition of a "public building" in 50-60-101, MCA.

(46) The term "farm or ranch building" as used in 50-60-102, MCA, is defined as a building located on and used in conjunction with, or in support of an agricultural use of a parcel of land, that either totals 160 or more contiguous acres under one ownership or is classified as agricultural pursuant to Title 15, chapter 7, part 2, MCA. The term "farm and ranch building" does not include buildings which are classified as either Group F or Group M Occupancies by the International Building Code.

(47) Notwithstanding any other provisions within the International Building Code, the following adult group residential facilities, licensed by the department of public health and human services will be classified and treated as follows:

(a) category A personal care facilities with one to 19 residents, as referenced in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standard purposes. Automatic fire sprinkler systems are not required.

(b) category B personal care facilities with one to 19 residents, as referenced in 50-5-226, MCA, will be classified as an R-4 occupancy for building permit and construction standards purposes. In addition, a category B personal care facility shall have an automatic fire sprinkler system and provide an accessible sleeping room or space for each category B resident.

(c) A personal care facility with 20 or more residents, in any combination of category A or category B, will be classified as an R-2 occupancy for building permit and construction standards and shall meet accessibility standards as provided in subsection 1103 of the International Building Code. Automatic fire sprinkler systems are required. A fire wall cannot be used to isolate and reduce occupant loads in order to avoid an R-2 classification.

(48) Section 50-60-102(1)(a), MCA, exempts certain buildings from application of the state building codes. Provisions of the International Building Code shall not be applied in determining whether a building or structure is exempt from the state building codes. For example, fire walls as described in section 705 of the International Building Code shall not be used to separate buildings otherwise covered by the state building codes into smaller buildings that would, if alone, be exempted by 50-60-102(1)(a), MCA.

(49) The exemptions in 50-60-102(1)(a), MCA, do not apply to any building used as or in conjunction with a hotel, motel, inn, motor court, guest or dude ranch, tourist home, public lodging house, youth camp, church camp, dormitory, youth living quarters, adult pre-release centers, bed and breakfast establishment or other places where sleeping accommodations are furnished for a fee to a transient guest. "Transient guest" means a guest for only a brief stay, such as the traveling public.

TABLE 406.4.2
VENTILATION TABLE
REQUIRED OUTDOOR VENTILATION AIR

OCCUPANCY CLASSIFICATION	ESTIMATED MAXIMUM OCCUPANT LOAD, PERSONS PER 1,000 SQUARE FEET ^a	OUTDOOR AIR [cubic feet per minute (cfm) per person] UNLESS NOTED ^e
Correctional Facilities		
Cells	20	20
Dining halls	100	15
Guard stations	40	15
Dry cleaners, laundries		
Coin-operated dry cleaner	20	15
Coin-operated laundries	20	15
Commercial dry cleaner	30	30
Commercial laundry	10	25
Storage, pick up	30	35
Education		
Auditoriums	150	15
Classroom	50	15
Corridors	--	0.10 cfm/ft ²
Laboratories	30	20
Libraries	20	15
Locker rooms	--	0.50 cfm/ft ²
Music rooms	50	15
Smoking lounges ^{b,g}	70	60
Training shops	30	20
Food and beverage service		
Bars, cocktail lounges	100	30
Cafeteria, fast foods	100	20
Dining rooms	70	20
Kitchens (cooking) ^{f,g}	20	15
Hospitals, nursing and convalescent homes		
Autopsy rooms ^b	--	0.50 cfm/ft ²
Medical procedure rooms	20	15
Operating rooms	20	30
Patient rooms	10	25
Physical therapy	20	15
Recovery and ICU	20	15
Hotels, motels, resorts and dormitories		
Assembly rooms	120	15
Bathrooms ^{b,g}	--	35 cfm per room
Bedrooms	--	30 cfm per room
Conference rooms	50	20
Dormitory sleeping areas	20	15
Gambling casinos	120	30
Living rooms	--	30 cfm per room
Lobbies	30	15

OCCUPANCY CLASSIFICATION	ESTIMATED MAXIMUM OCCUPANT LOAD, PERSONS PER 1,000 SQUARE FEET ^a	OUTDOOR AIR [cubic feet per minute (cfm) per person] UNLESS NOTED ^e
Offices		
Conference rooms	50	20
Office spaces	7	20
Reception areas	60	15
Telecommunications and data entry	60	20
Theaters		
Auditoriums	150	15
Lobbies	150	20
Stages, studios	70	15
Ticket booths	60	20
Transportation		
Platforms	100	15
Vehicles	150	15
Waiting rooms	100	15
Workrooms		
Bank vaults	5	15
Darkrooms	--	0.50 cfm/ft ²
Duplicating, printing	--	0.50 cfm/ft ²
Meat processing ^c	10	15
Pharmacy	20	15
Photo studios	10	15
Sports and amusement		
Ballrooms and discos	100	25
Bowling alleys (seating areas)	70	25
Game rooms	70	25
Ice arenas	--	0.50 cfm/ft ²
Playing floors (gymnasiums)	30	20
Spectator areas	150	15
Swimming pools (pool and deck area)	--	0.50 cfm/ft ²
Storage		
Repair garages, enclosed parking garages ^d	--	1.5 cfm/ft ²
Warehouses	--	0.05 cfm/ft ²

OCCUPANCY CLASSIFICATION	ESTIMATED MAXIMUM OCCUPANT LOAD, PERSONS PER 1,000 SQUARE FEET ^a	OUTDOOR AIR [cubic feet per minute (cfm) per person] UNLESS NOTED ^e
Private dwellings, single and multiple		
Living areas ^c	Based upon number of bedrooms. First bedroom: 2; each additional bedroom: 1	0.35 air charges per hour ^a or 15 cfm per person, whichever is greater
Kitchens	--	100 cfm intermittent or 25 cfm continuous
Toilet rooms and bathrooms ^g	--	Mechanical exhaust capacity of 50 cfm intermittent or 20 cfm continuous
Garages, separate for each dwelling	--	100 cfm per car
Garages, common for multiple units ^b	--	1.5 cfm/ft ²
Public spaces		
Corridors and utilities	--	0.05 cfm/ft ²
Elevators ^g	--	1.00 cfm/ft ²
Locker and dressing rooms ^b	--	0.5 cfm/ft ²
Toilet rooms ^{b,g}	--	75 cfm per water closet or urinal
Smoking lounges ^{b,g}	70	60
Retail stores, sales floors and showroom floors		
Basement and street	--	0.30 cfm/ft ²
Dressing rooms	--	0.20 cfm/ft ²
Malls and arcades	--	0.20 cfm/ft ²
Shipping and receiving	--	0.15 cfm/ft ²
Smoking lounges ^b	70	60
Storage rooms	--	0.15 cfm/ft ²
Upper floors	--	0.20 cfm/ft ²
Warehouses	--	0.05 cfm/ft ²

OCCUPANCY CLASSIFICATION	ESTIMATED MAXIMUM OCCUPANT LOAD, PERSONS PER 1,000 SQUARE FEET ^a	OUTDOOR AIR [cubic feet per minute (cfm) per person] UNLESS NOTED ^e
Specialty shops		
Automotive service stations	--	1.5 cfm/ft ²
Barber	25	15
Beauty	25	25
Clothiers, furniture	--	0.30 cfm/ft ²
Florists	8	15
Hardware, drugs, fabrics	8	15
Pet shops	--	1.00 cfm/ft ²
Reducing salons	20	15
Supermarkets	8	15

For SI:

1 cubic foot per minute = 0.0004719 m³/s, 1 ton = 908 kg.

1 cubic foot per minute per square foot = 0.00508 m³/(s - m²).

a. Based upon net floor area.

b. Mechanical exhaust required and the recirculation of air from such space is prohibited.

c. Spaces unheated or maintained below 50°F are not covered by these requirements unless the occupancy is continuous.

d. Ventilation systems in enclosed parking garages shall comply with Section 406.4, IBC. A mechanical ventilation system shall not be required in garages having a floor area not exceeding 850 square feet and used for storage of not more than four vehicles or trucks of 1 ton maximum capacity.

e. Where ventilation rate is expressed in cfm/ft², such rate is based upon cubic feet per minute per square foot of the floor area being ventilated.

f. The sum of the outdoor and transfer air from adjacent spaces shall be sufficient to provide an exhaust rate of not less than 1.5 cfm/ft².

g. Transfer air permitted in accordance with Section 1202, IBC.

AUTH: 50-60-203, MCA

IMP: 50-60-101, 50-60-102, 50-60-104, 50-60-201, 50-60-203 and 50-60-205, MCA

REASON: The objective of this rule is to maintain consistency with established practices. This proposed rule maintains current amendments to the UBC which have been developed and adopted over the years to address the needs, practices and laws particular to Montana.

This proposed rule is analogous to current rules as follows:

New Rule V(10):	24.301.108(23)
New Rule V(11):	24.301.107(11)
New Rule V(13):	24.301.107(14)
New Rule V(18):	24.301.108(21)
New Rule V(22):	24.301.108(17)
New Rule V(23):	24.301.108(24)
New Rule V(24):	24.301.108(25)
New Rule V(30):	24.301.107(5)
New Rule V(35):	24.301.108(3)
New Rule V(36):	24.301.108(5)
New Rule V(37):	24.301.108(8)
New Rule V(38):	24.301.108(9)
New Rule V(39):	24.301.108(12)
New Rule V(40):	24.301.108(12)
New Rule V(41):	24.301.108(13)
New Rule V(42):	24.301.108(14)
New Rule V(43):	24.301.108(16)
New Rule V(44):	24.301.108(18)
New Rule V(45):	24.301.108(19)
New Rule V(46):	24.301.108(22)
New Rule V(47):	24.301.108(26)
New Rule V(48):	24.301.108(6)
New Rule V(49):	24.301.108(7)

New Rule V(2) through (6), (8), (9), (29), (31) and (32) are required to properly cross reference other building related codes which make up the state building, plumbing, mechanical, energy, electrical codes.

New Rule V(7) and (33) delete the IBC coverage of subject matters not addressed by, or inconsistent with, the Montana state building code.

New Rule V(12), (14) through (17), (19) through (21), (25), (27), (28) and (34) have no equivalent in existing rule, however, are required to maintain the current standards for ventilation. These specific rule proposals are required because the IBC does not contain the necessary cross references to the Uniform Mechanical Code which is the basic code document for the state mechanical code.

NEW RULE VI EFFECTIVE DATE OF INTERNATIONAL BUILDING CODE

(1) For a one year period starting on [the effective date of this rule], or until the 2003 edition of the IBC is adopted, whichever comes first, owners and design professionals may choose to submit projects for plan review designed either to the requirements of the International Building Code or to the requirements of the Uniform Building Code. Projects shall be designed specifically to one code and shall not incorporate requirements or provisions from more than one code in the same design.

AUTH: 50-60-203, MCA
IMP: 50-60-203, MCA

REASON: The Department proposes a phased-in approach to the adoption of the International Building Code to allow design professionals and contractors an opportunity to gain familiarity with the new code, the subtle changes in approach and new requirements the International Building Code will present.

NEW RULE VII INCORPORATION BY REFERENCE OF INTERNATIONAL RESIDENTIAL CODE (1) The International Residential Code (IRC) is a nationally recognized model code setting forth minimum standards and requirements for the construction, prefabrication, alteration and repair, of detached one or two family dwellings not more than three stories in height, and their accessory structures. The IRC also provides a framework for program administration.

(2) The department of labor and industry, by and through the building codes bureau, adopts and incorporates by reference herein the International Residential Code, 2000 Edition, referred to as the International Residential Code or IRC.

(3) IRC chapters 11 through 43, inclusive, are deleted in their entirety.

(4) IRC Subsection R301.5, Roof Load, is deleted and replaced with the following: "Snow loads shall be determined by the building official. In areas of the state outside of certified local government jurisdictions, the design snow load shall be based on the ground snow loads developed in "Snow Loads for Structural Design in Montana", authored by F.F. Videon and J.P. Schilke, Civil & Agricultural Engineering, Montana State University, August 1989. The minimum design roof snow load after allowed reductions shall be 30 psf. Note: Other coefficients and factors may be used when justified by a Montana licensed design professional to the satisfaction of the building official."

(5) IRC Subsection R314.2, Treads and Risers, is amended to allow a maximum riser height of 8 1/4 inches and a minimum tread depth of 9 inches.

(6) IRC Subsection R315.2, Handrail grip size, is amended to read as follows: "Handrails shall have either circular cross-section with a diameter of 1 1/4 inches (32mm) to 2 inches (51mm), or a non-circular cross-section with a perimeter dimension of at least 4 inches (102mm) but not more than 6 1/4 inches (159mm) and a largest cross section dimension not exceeding 2 1/4 inches (28.6mm), or provide equivalent grasp ability. Edges shall have a minimum radius of 1/8 inch (3.2mm)."

(7) Appendices do not apply unless specifically adopted by the department.

(8) A copy of the International Residential Code may be obtained from the Department of Labor and Industry, Building Codes Bureau, P.O. Box 200517, 301 South Park, Helena, Montana 59620-0517, at cost plus postage and handling. A copy may also be obtained by writing to the International Council of Building

Officials, 5360 Workman Mill Road, Whittier, California 90601-2298.

AUTH: 50-60-203, MCA

IMP: 50-60-102, 50-60-201 and 50-60-203, MCA

REASON: The Department is proposing the adoption of the International Residential Code, 2000 edition, as the primary residential code for the state building code because the currently adopted CABO One and Two Family Dwelling Code, 1995 edition, is no longer being administratively supported or being updated by its publishers. The International Residential Code is being proposed as the basic code addressing residential construction because it is the designated successor to the CABO One and Two Family Dwelling Code, is the choice of the Building Code Council and is supported by local government building officials.

NEW RULE VIII EFFECTIVE DATE OF INTERNATIONAL RESIDENTIAL CODE (1) For a one year period starting on [the effective date of this rule], or until the 2003 edition of the IRC is adopted, whichever comes first, owners and design professionals may choose to submit projects for plan review designed either to the requirements of the International Residential Code or to the requirements of the CABO One and Two Family Dwelling Code. Projects shall be designed specifically to one code and shall not incorporate requirements or provisions from more than one code in the same design.

AUTH: 50-60-203, MCA

IMP: 50-60-203, MCA

REASON: The Department proposes a phased-in approach to the adoption of the International Residential Code to allow design professionals and contractors an opportunity to gain familiarity with the new code and the subtle changes in approach and new requirements the International Residential Code will present.

5. Concerned persons may present their data, views, or comments, either orally or in writing, at the hearing. Written data, views, or comments may also be submitted to:

Department of Labor and Industry
Building Codes Bureau
(301 South Park, Fourth Floor)
P.O. Box 200517
Helena, Montana 59620-0517

or by facsimile to (406) 841-2050, or by e-mail at kmckay@state.mt.us and must be received by no later than 5:00 p.m., July 23, 2002.

6. An electronic copy of this Notice of Public Hearing is available through the Department's site on the world wide web at <http://dli.state.mt.us/calendar.htm>, under the Calendar of Events, Administrative Rule Hearings section. Interested persons may make comments on the proposed rules via the comment forum, <http://forums.dli.state.mt.us>, linked to the Notice of

Public Hearing, but those comments must be posted to the comment forum by 5:00 p.m., July 23, 2002. The Department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the Department strives to keep its website accessible at all times, concerned persons should be aware that the website may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the comment forum does not excuse late submission of comments.

7. The Building Codes Bureau maintains a list of interested persons who wish to receive notices of rule-making actions proposed by this Bureau. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all Building Codes Bureau administrative rule-making proceedings or other administrative proceedings. Such written request may be mailed or delivered to the Building Codes Bureau, (301 South Park, Fourth Floor), P.O. Box 200517, Helena, Montana 59620-0517, or may be made by completing a request form at any rules hearing held by the Department.

8. The bill sponsor notice provisions of 2-4-302, MCA, do not apply.

9. Mark Cadwallader has been designated to preside over and conduct the hearing.

/s/ WILLIAM H. JELLISON
William H. Jellison, Bureau Chief
Building Codes Bureau

/s/ KEVIN BRAUN
Kevin Braun,
Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 3, 2002.

BEFORE THE COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of a new rule pertaining to)
the administration of the 2002)
Federal Community Development)
Block Grant Program)

TO: All Concerned Persons

1. On December 20, 2001, the Department of Commerce published notice of a public hearing on the proposed adoption of the above-stated rule at page 2449, 2001 Montana Administrative Register, issue number 24. The Department convened the hearing on January 16, 2002. Written comments were accepted until 5:00 p.m. January 17, 2002.

2. The Department has adopted New Rule I (8.94.3717) exactly as proposed.

3. Fifteen members of the public attended the hearing, and four persons testified, and the Department received several written comments during the public comment period provided for by the Administrative Procedure Act. Except as noted below, these comments supported the changes proposed by the Department. A summary of the negative comments and the Department's responses to them follow:

COMMENT NO. 1: The Department has proposed to lower its interest rate for economic development projects from 6.5% to 5% to account for the decrease in interest rates over the last year. It would be preferable for the Department to tie its interest rate to the prime rate or to the rate charged by local banks so as to be more responsive to changes in the economy.

RESPONSE: Using a fixed rate is less burdensome administratively and provides more predictability to potential project applicants than does a variable rate. The Department will keep the interest rate at 5%. It is expected that with the number of projects in the pipeline now, most of the money will be obligated in the next several months before general rates increase or decrease appreciably.

COMMENT NO. 2: The Department has proposed to continue allowing employee training as an eligible CDBG economic development activity. In addition, the Department is administering \$363,764 of Workforce Investment Act (WIA) funds under the Governor's Discretionary Fund to provide employee training. Of this amount, \$248,764 will be used as supplementary funding to CDBG employee training grants. Also, the Montana Manufacturing Extension Center will expend an additional \$115,000 for training for Montana manufacturing

companies. These funds should be used in partnership with WIA Youth Programs to target jobs that would help stem the flow of young Montanans seeking employment out of state. In addition, CDBG funds should be used to establish Individual Development Accounts (IDA) which are partnership savings programs between private non-profit corporations and banks to help low-income people save for high-dollar purchases within their communities.

RESPONSE: Within the last year HUD has added the creation of IDA's as an eligible CDBG activity. IDA's are dedicated savings accounts that can be used only to purchase a home, pay for education or job training expenses, or start a business. Contributions are made by individuals and matched by other public or private sources. CDBG funds may be used as a required match.

Although the Department endorses the concept underlying IDA's, it does not believe that investment in these accounts is an appropriate use of CDBG funds. This is due, in part, to the fact that the benefits of IDA's may not materialize for many years whereas the CDBG economic development projects are expected to bear fruit within a much shorter timeframe. In addition, there is substantial pressure from HUD and Congress to expend CDBG funds in a fairly short timeframe rather than over the extended period that investment in IDA's would require.

The primary emphasis of the CDBG economic development program is to directly assist businesses to create or retain jobs, at least 51% of which will be or are held by low to moderate income individuals. It is one of only a few state and federal financing programs that take this approach while offering the business community a level of flexibility that makes the program attractive.

COMMENT NO. 3: The Department has proposed that, in the absence of extenuating circumstances, hotels, motels and retail operations would be ineligible for CDBG economic development funding. The Department bases this policy on the view that these businesses often compete directly with similar businesses in the community and tend not to provide high paying jobs. In order not to eliminate what may be sound projects in the future, the Department should evaluate this policy over a one-year period.

RESPONSE: The Department will consider these projects on a case by case basis in consideration of other projects that need funding and the program's portfolio of loans. The Department wanted to preclude reviewing these kinds of projects. This will give the Department Loan Review Committee maximum discretion in making a decision. This criterion would be in effect for program year ending March 31, 2003, only. Guidelines would be proposed for the following year in November 2002, at which time the criterion would be reevaluated for the following program year.

COMMENT NO. 4: The Department has proposed to raise the "public benefit" standard (the maximum amount of CDBG economic development funds that can be disbursed per job created or retained) from \$15,000 per job to \$25,000 per job, in order to allow companies that employ fewer people to qualify for funding. If a business is borrowing \$25,000 for each job it intends to create or retain, it should be required to pay a higher wage rate. Companies that are borrowing \$15,000 for each job it intends to create or retain should be required to pay only the minimum wage.

RESPONSE: When making funding decisions the Department considers many factors including the types of jobs to be created or retained and the wages they will pay. Applications are developed and prescreened with input from the CDBG staff and the Department's Regional Development Officers. Consequently, although the idea has merit, the use of the suggested two-tiered salary requirement may over-complicate what is already perceived by some as an overly complicated application process.

COMMENT NO. 5: To expedite the expenditure of CDBG public facilities funds, the Department proposed to conduct grant competitions for both 2002 and 2003 funding allocations over a 12-month period. This doubling of the grant competitions would be a one-time only event. Public facilities applications for 2002 would be due in May 2002 and a combined housing competition for 2002 and 2003 would have applications due in October 2002.

The public facilities applications for 2003 CDBG funds would be due in January 2003. The program would return to a normal annual cycle again in 2004 (with applications due in May, 2003 for 2004 funds and in May, 2004 for 2005 funds.)

Why is the Department proposing to go back to spring for the public facilities category for FY 2004, rather than move the application date and keep it in mid-January?

RESPONSE: For many years the application deadline for CDBG public facilities grants has been in May to coincide with the application deadlines for the Renewable Resource Program of the Department of Natural Resources and Conservation (DNRC) and the Treasure State Endowment Program (TSEP). DNRC and TSEP applications are submitted in the spring of even-numbered years, reviewed by the agencies during the summer, and presented to the Legislature in January of odd-numbered years. To assist local governments in preparing grant applications for submission in the spring of even-numbered years the Department holds grant application workshops in the fall of odd-numbered years and, again, in the early spring of the even-numbered years before applications are due.

COMMENT NO. 6: The Department should allocate more of its CDBG funds for public facility projects and less for housing projects than it has proposed.

RESPONSE: The Department's allocation of funds between housing and public facilities projects are based on the approximate percentage of applications requested for the previous two-year period. The use of this two-year average compensates for any variability in the demand for CDBG public facilities funding attributable to the biennial cycle of DNRC's Renewable Resource Program and the MDOC's Treasure State Endowment Program under which grants are subject to legislative approval.

In this way, the funding reserved for each category responds to changing demands for CDBG housing and public facilities grants over time. The amounts allocated between the two categories vary from year to year based upon actual past demand; however, the basic method of distribution remains unchanged. This demand-driven allocation system has proven to be fair over time since it is based upon the needs and preferences expressed by local governments.

COMMENT NO. 7: The Department has proposed that a preliminary architectural report be prepared for all proposed CDBG projects involving the new construction or major rehabilitation of buildings. A request for proposals (RFP) would have to be issued for the procurement of professional architects in those cases involving more than \$10,000. Often a grantee obtains the services of an architect or engineer at an early stage of the project planning, and requiring the subsequent issuance of a formal RFP for architectural services serves no constructive purpose.

RESPONSE: State law (18-8-203, MCA) requires public entities to issue RFP's whenever a public entity wishes to procure architectural service expected to exceed \$10,000. The Department is not at liberty to waive this requirement.

COMMENT NO. 8: The expense of obtaining preliminary architectural reports on each single-family house included in a housing rehabilitation project could render these projects cost prohibitive.

RESPONSE: This requirement will only apply to multi-family residential projects or construction of public facilities such as nursing homes, senior centers, or Head Start Centers.

4. No other testimony or comments were received.

COMMUNITY DEVELOPMENT DIVISION
DEPARTMENT OF COMMERCE

BY: /s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

BY: /s/ Mark A. Simonich
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

Certified to the Secretary of State June 3, 2002.

BEFORE THE HARD-ROCK MINING IMPACT BOARD
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT AND
of ARM 8.104.101 pertaining to) REPEAL
the organizational rule and the)
repeal of ARM 8.104.301,)
8.104.302, 8.104.303,)
8.104.304 and 8.104.305 per-)
taining to rules governing)
awarding of grants)

TO: All Concerned Persons

1. On February 28, 2002, the Hard-Rock Mining Impact Board published notice of proposed amendment and repeal of the above-stated rules at page 425, 2002 Montana Administrative Register, issue number 4.

2. The Board has amended and repealed the rules exactly as proposed.

3. No comments or testimony were received.

HARD-ROCK MINING IMPACT BOARD

BY: /s/ Mark A. Simonich
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

BY: /s/ G. Martin Tuttle
G. MARTIN TUTTLE
Rule Reviewer

Certified to the Secretary of State June 3, 2002.

BEFORE THE MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE
STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT
of ARM 8.119.101 pertaining to)
the Tourism Advisory Council)

TO: All Concerned Persons

1. On April 11, 2002, the Montana Promotion Division published notice of proposed amendment of the above-stated rule at page 1013, 2002 Montana Administrative Register, Issue No. 7.

2. The Division has amended the rule exactly as proposed.

3. No comments or testimony were received.

MONTANA PROMOTION DIVISION
DEPARTMENT OF COMMERCE

By: /s/ MARK A.SIMONICH
MARK A. SIMONICH, DIRECTOR
DEPARTMENT OF COMMERCE

By: /s/ G. MARTIN TUTTLE
G. MARTIN TUTTLE, RULE REVIEWER

Certified to the Secretary of State June 3, 2002.

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
OF THE STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION AND
of new rule I relating to) AMENDMENT
students placed in private)
education programs, and the)
amendment of ARM 10.7.106A,)
10.10.301, 10.10.301B,)
10.10.301C, 10.10.301D,)
10.16.3818, and 10.20.102)
relating to tuition)

TO: All Concerned Persons

1. On March 28, 2002, the Superintendent of Public Instruction published notice of the proposed adoption and amendment of rules concerning tuition at page 855 of the 2002 Montana Administrative Register, Issue Number 6.

2. The Superintendent of Public Instruction adopted New Rule I [ARM 10.20.106] STUDENTS PLACED IN EDUCATION PROGRAMS exactly as proposed.

3. The Superintendent of Public Instruction amended ARM 10.7.106A, 10.10.301, 10.10.301C, 10.10.301D, and 10.16.3818 exactly as proposed.

4. The Superintendent of Public Instruction amended the following rules with the following changes, stricken matter interlined, new matter underlined:

10.10.301B OUT-OF-DISTRICT ATTENDANCE AGREEMENTS

(1) through (5) remain as proposed.

(6) For purposes of 20-5-321(1)(a), MCA, "transportation" shall include, but not be limited to, the offering or provision of:

(a) through (12) remain as proposed.

10.20.102 CALCULATION OF AVERAGE NUMBER BELONGING (ANB)

(1) through (7) remain as proposed.

(a) a kindergarten student enrolled ~~in a program designed to provide for~~ less than 180 hours of pupil instruction time per school year is reported as enrolled but is excluded from eligibility for purposes of ANB. A kindergarten student enrolled ~~in a program designed to provide for~~ 180 hours or more of pupil instruction time per school year is reported as enrolled and is included in eligibility for purposes of ANB.

(b) through (15)(b) remain as proposed.

5. The Superintendent of Public Instruction thoroughly considered the comments and testimony received on the proposed rules. The following is a summary of the comments received and the Superintendent's responses.

COMMENT NO. 1: One commenter stated that he felt there was a conflict between ARM 10.20.102(7)(a) and (14) regarding the number of hours of pupil instruction for kindergarten students. He suggests changing (7)(a) to read: "A kindergarten student enrolled in a program of 180 hours or more ...". He feels that the program should be designed to provide at least 360 hours but that the student may attend part time.

In connection with (9) and (10) the commenter doesn't feel it should be necessary to file an application to apply for increased ANB for students placed pursuant to New Rule I (ARM 10.20.106) or early graduates. He feels it would be simpler to add a line to the form.

In connection with (15)(a) the commenter feels it is cumbersome to report by budget unit and doesn't feel it considers everything, for example, early grads and students under New Rule I.

RESPONSE: The Superintendent agrees that (7)(a) could be clarified and has adopted the amended language in that subsection as set forth above.

The Superintendent agrees that a separate application form is not necessary. Districts "apply" for increased enrollment for early graduates, as provided in ARM 10.20.102(10), on the enrollment count forms. OPI will build the application for contracted education services students into the enrollment forms in a similar manner rather than requiring a separate form.

Use of enrollment by budget unit is current practice and is necessary in order for OPI to calculate entitlements in accordance with state law. Early graduates and students counted under New Rule I would be included in the "enrollment" referred to in section (15), so no special reference to those groups is necessary.

COMMENT NO. 2: One commenter is an administrator for a public K-8 school and a private 9-12 school. He states that they have been receiving ANB in the K-8 school for elementary kids, but that they aren't receiving ANB for the high school kids and neither is the sending district. His concern is whether or not this rule will have any affect on the ANB that they currently receive for the elementary students.

RESPONSE: Students will continue to be counted for ANB purposes by the public school district in which they are enrolled. The changes made in these rules do not affect which public school district is allowed to count an eligible student.

COMMENT NO. 3: One commenter explained his program deals with emotionally disturbed children and wanted to know what happens with ANB in the following instances:

(a) a student is only there for one count day, is the

reduction 40% of ANB and half the block grant or how is it figured?

(b) a student is not there for either count day, i.e. enrolled on February 10th and remains through the rest of the school year which is 78 days, do the districts receive unique special education costs from the sending counties?

(c) will the districts involved be reimbursed for any unique special education costs if the students are not present on count days?

RESPONSE: The tuition rate for a pupil is not affected by the student's enrollment, or lack of enrollment, on the count date(s).

ARM 10.10.301(5)(b) requires that, "Tuition shall be adjusted for the portion of the year the student is enrolled, based on the percentage calculated by dividing the number of days the student is enrolled by 180." In applying that rule to the annualized tuition rate, net of the annual state funding per pupil, the tuition rate is reduced only by the daily state funding amount per pupil for each day of enrollment. The answers to the commenter's specific questions are:

(a) The tuition rate is reduced by the daily state funding rate per ANB times the number of days enrolled, regardless of whether the student was enrolled on the count date(s);

(b) Yes, the district would receive the appropriate tuition from the county based on the student's 78 days of enrollment, regardless of whether the student was enrolled on the count date(s);

(c) Student enrollment, not attendance, is considered on the enrollment count dates for purposes of ANB. Absences on the count date do not affect the count of eligible enrolled students, except a student who has been absent more than 10 consecutive days on the count date is considered ineligible to be counted as enrolled. The student's enrollment or presence on the count date is irrelevant to the tuition charges the district can charge and collect.

/s/ Linda McCulloch
Linda McCulloch
Superintendent
Office of Public Instruction

/s/ Jeffrey A. Weldon
Jeffrey A. Weldon
Rule Reviewer
Office of Public Instruction

Certified to the Secretary of State, June 3, 2002.

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

In the matter of the) NOTICE OF AMENDMENT
amendment of ARM 24.11.204,) AND ADOPTION
24.11.613, 24.11.616, and)
24.11.1207 and the)
adoption of a new rule all)
relating to unemployment)
insurance benefits matters)

TO: All Concerned Persons

1. On April 11, 2002, the Department of Labor and Industry published notice of the proposed amendment and adoption of rules related to unemployment insurance benefit matters at page 1044 of the 2002 Montana Administrative Register, Issue Number 7.

2. A public hearing was held in Helena on May 3, 2002.

3. There were three comments received during the comment period.

4. The Department has amended ARM 24.11.616, 24.11.1207; and adopted New Rule I (ARM 24.11.469) exactly as proposed. The Department has amended ARM 24.11.204 and 24.11.613 as proposed, but with the following changes: (new matter underlined, stricken matter interlined, changed matter in ALL CAPS)

24.11.204 DEFINITIONS (1) through (27) same as proposed.
(28) "Recently lived" as used in 39-51-2111(5), MCA, means having lived with the abusive person for A PERIOD OF TIME DURING the 12 month period immediately preceding the date the claimant left insured work or was discharged from insured work due to domestic violence or domestic abuse.

(29) through (36) same as proposed.

24.11.613 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS--CHARGEABLE EMPLOYERS (1) same as proposed.

(2) An employer has not reduced hours or wages as used in 39-51-1214, MCA, if continued work was available for the same number of hours prior to the date the initial claim was filed as at the time of most recent hire. If the claimant was hired on a part-time basis with no guaranteed hours, no reduction has occurred unless the wages paid or the hours available ~~for the month prior to the filing date of the claim were 10 percent less than any prior month in the most recent completed calendar quarter~~ in the four weeks PERIOD following the filing date of the claim are at least 10% less than the wages paid or hours available in the four weeks PERIOD prior to the filing date of the claim. A reduction for salaried employees is based on a reduction in salary only, not on a reduction in hours.

(3) through (4) same as proposed.

5. The following comments were received, and appear with the Department's responses:

24.11.204 DEFINITIONS

COMMENTS 1 AND 2: Two comments were received questioning whether the Department intended for the claimant or the claimant's children to reside with the abusive person for the entire 12-month period, or during a portion of the 12-month period immediately preceding the date when the claimant left work.

RESPONSE: The Department has considered these comments and states that the Department intended the rule to require the claimant or the claimant's children to only have resided with an abusive person for a portion of the 12-month period preceding the date the claimant left work. The Department will make the suggested language change and appreciates the comments.

24.11.613 CHARGING BENEFIT PAYMENTS TO EXPERIENCE-RATED EMPLOYERS--CHARGEABLE EMPLOYERS

COMMENT NO. 3: One comment was received questioning whether a wage reduction is determined on a weekly basis or if the reduction was based upon a 4-week period following the filing of a claim.

RESPONSE: The Department has considered the comment and intends to use the earnings received in the 4-week period following the claim filing date to determine if a reduction occurred. The Department appreciates the comment and will make the suggested language change for clarification.

/s/ KEVIN BRAUN
Kevin Braun
Rule Reviewer

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

Certified to the Secretary of State: June 3, 2002.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 44.3.1101 regarding) NOTICE OF AMENDMENT
schedule of fees for centralized)
voter file)

TO: All Concerned Persons

1. On March 28, 2002 the Secretary of State published notice of the proposed amendment of ARM 44.3.1101 regarding the schedule of fees for the centralized voter file at page 896 of the 2002 Montana Administrative Register, issue number 6.

2. The Secretary of State has amended ARM 44.3.1101 as proposed.

3. No comments or testimony were received.

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 30th day of May, 2002

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the amendment)
of ARM 44.6.201 and)
adoption of new rules) NOTICE OF AMENDMENT
regarding Uniform Commercial) AND ADOPTION
Code filings (UCC))

TO: All Concerned Persons

1. On March 28, 2002, the Secretary of State published notice of the proposed amendment of ARM 44.6.201 and adoption of new rules at page 898 of the 2002 Montana Administrative Register, issue number 6.

2. The Secretary of State has amended ARM 44.6.201 as proposed, and adopted new rules I and II (44.6.202 and 44.6.203) with the following changes:

RULE I (44.6.202) EFFECTIVE DATE AND TIME (1) and (2) same as proposed.

AUTH: Sec. ~~30-9-539~~ 30-9A-526, MCA

IMP: Sec. ~~30-9-539~~ 30-9A-519, MCA

RULE II (44.6.203) REQUIREMENTS FOR FILING UCC AMENDMENTS (1) through (2) same as proposed.

AUTH: Sec. ~~30-9-546~~ 30-9A-526, MCA

IMP: Sec. ~~30-9-539~~ 30-9A-519, MCA

3. Two comments were received.

COMMENT 1: The first comment was from Christopher Herriges that items received via postal delivery to the Secretary of State should not get preference over hand-delivered items that are received before mailed items.

RESPONSE: Items delivered by mail are collected at central mail at 6:00 a.m. on the day after they are received. They are then transferred to the Secretary of State and given a stamp of 8:00 a.m. of the day they are received by the Secretary of State. This is one day after the Helena Post Office has received them. An item that is hand-delivered will get the date and time stamp of receipt by the Secretary of State. Given the way the mail is delivered to the Secretary of State, items delivered by the postal service will not get a date and time preference over items hand-delivered to the Secretary of State.

COMMENT 2: The second comment was received from Legislative Services recommending that for the two new rules 30-9A-526, MCA should be the cite for authority and 30-9A-519, MCA should be the cite for implementation.

RESPONSE: This comment has been incorporated into the final rules.

/s/ Bob Brown
BOB BROWN
Secretary of State

/s/ Janice Doggett
JANICE DOGGETT
Rule Reviewer

Dated this 30th day of May, 2002

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;
- Department of Public Service Regulation; and
- Office of the State Auditor and Insurance Commissioner.

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.

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 PO 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) 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
Number and
Department | 2. Go to cross reference table at end of each title which lists MCA section numbers and 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, 2002. This table includes those rules adopted during the period April 1, 2002 through June 30, 2002 and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within 6 months of the published notice of the proposed rule.) This table does not, however, include the contents of this issue of the Montana Administrative Register (MAR).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through March 31, 2002, 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 2001 and 2002 Montana Administrative Registers.

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

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